

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-6052

In The
United States Court of Appeals
For The Second Circuit

HUI, YING LAI (A17 540 719) and SHEK, LAP KIN (A15 196 208),

Plaintiffs-Appellants,

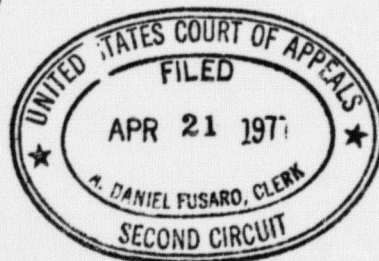
vs.

MAURICE F. KILEY, as District Director for the Immigration and Naturalization Service, New York District, United States Department of Justice,

Defendant-Appellee.

B p/s

APPENDIX FOR APPELLANTS



THOMAS A. CHURCH
Attorney for Plaintiffs-Appellants
94 Bayard Street
New York, New York 10013
(212) RE2-9237

10654

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DOCKET ENTRIES

(pp. 1a-2a)

OFFICE	YR.	NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	23	S	OTHER	NUMBER	DEM.	YR.	NUMBER
208-1	76	2890	29 76	2	890	1					0855		76	2890

PLAINTIFFS

DEFENDANTS Knapp, J.

HUI, YING LAI (A17 540 719)
and
SHEK, LAP KIN (A15 196 208)

KILEY, MAURICE F. as
DISTRICT DIRECTOR FOR THE
IMMIGRATION AND NATURALIZATION
SERVICE, NEW YORK DISTRICT,
UNITED STATES DEPT. OF JUSTICE

3/15

CAUSE

Declaratory Judgment (28) USC 2201 as to whether the Immigration Service
is following the proper procedure in handling applications for asylum made
by Chinese from Hong Kong. rg

ATTORNEYS

Thomas A. Church, Esq.
94 Fayard Street
New York, N.Y. 10013
tele: (212) Re 2-9237

Mary McGuire, Esq.
U.S. Atty SDNY

BEST COPY AVAILABLE

☐ CHECK
HERE
IF CASE WAS
FILED IN
ORMA
LIBRIS

DATE
JUN 29 1976

FILING FEES PAID

RECEIPT NUMBER

7247-✓

C.D. NUMBER

STATISTICAL CARDS

CARD DATE MAILED

JS-5

JS-6

3-11-77

DATE	NR.	PROCEEDINGS
6-29-76	1	Filed complaint and issued summons.
7-21-76	(2)	Filed summons and Stip. attached re: Stay of Deportation of Pltfs. and Cert. Receipt #233566 Copy Mailed to Atty. Gen, Wash., D.C. 7-2-76 Mr. Lee, U.S. atty. Office 07-02-76
1-30-76	3	Filed notice of motion by deft re: an order pursuant to Rule 56 FRCP granting summary judgment to deft. ret 12-17-76
1-30-76	4	Filed memo of law by deft re: support of motion for summary judgment
1-30-76	5	Filed Rule 9(g) statement by deft.
1-30-76	6	Filed affdvt of Maurice Kiley by deft re: support of defts motion for summary judgment.
1-30-76	7	Filed affdvt of Robert S Groban by deft re: support of deft's motion for summary judgment,
5-77	8	Filed stip & order deft's motion for jdgm is adjourned to 1-28-77. Knapp J.
1-24-77	9	Filed affdvt by plttfs re: opposition to the motion for summary jdgm.
1-24-77	10	Filed affdvt of Hui Ying Lai by plttf re ; opposition to the motion for summary jdgm.
1-24-77	11	Filed plttf's memo of law re opposition to the motion for summary jdgm
1-25-77	12	Filed plttf's Rule 9[g] statement.
1-27-77	13	Filed supplemental affdvt of deft re: support of the motion for summary jdgm & application for reasonable costs.
1-27-77	14	Filed supplemental memo of defts re: support of the motion for summary jdgm. etc.
2-01-77	15	Filed plttf's supplemental memo of law
3-01-77	16	Filed Memorandum & Order deft's motion for summary jdgm is granted. Deft's request for costs & fees is denied. Submit Jdgm. KNAPP J. (ap)
03-04-77	17	Filed ORDER that the letter received on 2-25-77 from plttf and the reply from the U.S. Atty. were not timely filed and were therefore not considered. However, the Clerk is ordered to docket them so the record will be clear. Knapp, J. mn
03-15-77	18	Filed Order & Judgment that defts motion for summary jdgm is granted, deft to have jdgm against plttfs & the action is dismissed, the application by deft for fees is denied at this time without prejudice should plttf bring further actions on this matter without evidence entitling them to relief. KNAPP J. Judgement Entered 3/15/77 Clerk m/n
3-15-77	19	Filed Notice of Appeal to the U.S.C.A by plttf from the Order & Judgment of 3/15/77. m/n

SUMMONS IN A CIVIL ACTION

CIV. 1a (3-64)
(Formerly D.C. Form No. 48a Rev. (6-63))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

76 CIV 2890
CIVIL ACTION FILE NO. _____HUI, Ying Lai (A17 540 719) and
SEK, Lap Kin (A15 196 208)

Plaintiff

v.

MAURICE F. KILEY, as District Director
for the Immigration and Naturalization
Service, New York District, United
States Department of Justice.

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

THOMAS A. CHURCH
Attorney for Plaintiffs

plaintiff's attorney , whose address is located at 94 Bayard Street, New York, NY 10013

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT
Clerk of Court.B. Wasserman
Deputy Clerk.

Date New York, New York

[Seal of Court]

this 29th day of June, 1976.

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

PLAINTIFFS' VERIFIED COMPLAINT (Filed June 29, 1976)
(pp. 4a-8a)

4a

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT NEW YORK

-----X

HUI, YING LAI (A17 540 719)	:	
and	:	
SHEK, LAP KIN (A15 196 208)	:	
Plaintiffs	:	
v.	:	<u>ACTION FOR</u>
	:	<u>DECLARATORY JUDGMENT</u>
MAURICE F. KILEY, as District Director for the	:	
Immigration and Naturalization Service, New York	:	
District, United States Department of Justice.	:	Civil Action No.
Defendant	:	

-----X

Plaintiffs, by their attorney, respectfully allege:

1. This is an action for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for a review under the Administrative Procedure Act (5 U.S.C. 1009).
2. Both of these plaintiffs were born in China, escaped from that country to Hong Kong after it became Communist dominated and eventually made their way to the United States, one as a visitor and the other as a crewman. Neither plaintiff is a British subject able to obtain a British passport, and unable to travel would be entrapped in Hong Kong. Both would be subject to severe economic persecution should they return. The Government has consistently conceded for the purpose of argument that such persons, including crewmen meet the definition of "refugee".
3. Both plaintiffs, after their respective hearings were found deportable and are now under orders of deportation.
4. Both were applicants for asylum which ^{regulation} became effective on January 29, 1975, 8 C.F.R. 108.2.
5. Both applications were denied, without reason, in identical language:

"This Service has determined that there is no basis for granting your request and has forwarded your application for an advisory opinion to the Department of State. You will be further advised."

6. No further reason has been given as to the denials of these applications by the District Director and no further communication received concerning the matter.

7. Both plaintiffs complain that their applications have not received individual treatment but treated as a class and in a discriminatory manner as Chinese from Hong Kong and that the procedure followed in their applications is violative of even the Service's own regulations.

8. The first plaintiff, Ying Lai HUI, will probably never be deported from the United States because the Government has never been able to obtain a travel document for him.

After escaping from China in approximately 1951, he lived in Hong Kong until 1954 when he made his way to Mexico.

Using the false identity of Luis Woo RAMIREZ, he obtained a Mexican passport and thence a United States visa for business and pleasure. He entered the United States at Calexico, California, on June 13, 1961, and has remained here since.

He has been involved in prior litigation. He was one of the stipulated cases in Ming v. Marks, 505 F.2d 1170 (2d cir. 1974), that assumed arguendo that the crewmen plaintiffs who were applying for the protection of Article 32 of the Geneva Convention, were refugees. The Court decided that they were not entitled to such protection because of either their unlawful entry or status. Lawful status is not required in an asylum application.

On December 2, 1971, he was found deportable to Mexico. Subsequently, a warrant of deportation was issued.

The Government tried unsuccessfully to obtain a travel document for him, from Mexico as a Mexican "Citizen." Although the Government could not deport him without a document, he was asked to surrender into the custody of the Service on at least two (2) occasions: on April 29, 1974 and finally

on November 10, 1975. On November 7, 1975, this plaintiff submitted his application for asylum as provided under 8 C.F.R. 108.2, and was duly interviewed in connection therewith. As indicated, he was notified that his application had been denied on February 3, 1976.

The asylum regulation, 8 C.F.R. 108.2 also provides that in the event of such a denial the applicant might apply for relief under Section 243(h) of the Immigration and Nationality Act; 8 U.S.C. 1253, in this case, by a motion to reopen.

Although no motion has been filed, the Government is now processing the case for denial as though such a motion had been made. The Government's trial attorney has submitted a brief in opposition to the non-existent motion urging that it be denied because "...Nothing anew has been submitted. ...and the respondent should be deported as ordered." These cases are processed in ^a/factory like manner without any individual consideration whatsoever.

9. The second plaintiff, Lap Kin SHEK, unlawfully entered the United States as a crewman on April 3, 1972. He was found deportable, after hearing, on October 10, 1972.

He has been the subject of prior litigation also. He was one of the stipulated cases under Ming v. Marks, supra. In fact, his present situation is an extension of that case. The Ming case involved crewmen claiming protection under Articles 32 and 33 of the Geneva Protocol and whether these provisions are binding on aliens unlawfully in the United States.

The Ming case makes it clear that those who are unlawfully in the United States are not barred from seeking relief under other available provisions of the immigration laws.

The Ming case was decided on November 8, 1974. Three months later, on January 29, 1975, the asylum regulation, 8 C.F.R. 108.2, became effective.

10. Both plaintiffs had previously applied for asylum under

the former policy of the Department of State concerning asylum. Both of those applications were also denied without reason, although the regulations require that specific reasons be given for denied applications. See: 8 C.F.R. 103.3.

11. In January, 1975, with the advent of the asylum regulation, the Government began accepting applications under the new regulations even in those instances where application had been previously made under the former policy conceding that in Hong Kong Chinese cases, and Hong Kong Chinese cases only, they had failed to submit written requests for opinions from the Office of Refugee Migration, of the Department of State, but had been obtaining "telephonic declinations" in those cases.

12. The Service, in its present policy of accepting and processing these applications is merely giving the appearance of giving due consideration to each application when, in fact, they have classified and treated all of them identically as Hong Kong Chinese and predetermined their disposition without taking into consideration the facts in each case.

13. Your plaintiffs complain that the discriminatory procedure followed in these cases is both illegal and unconstitutional.

14. The plaintiff, Lap Kin SHEK has been ordered to surrender for deportation on June 30, 1976.

15. That the reason this application is made by an Order to Show Cause instead of the usual Notice of Motion is that plaintiff will be deported from the United States before a motion could be heard.

16. That no previous application for the specific relief sought herein has been made to this or any other court of competent jurisdiction upon facts set forth herein.

17. Plaintiff has exhausted each and every one of his administrative remedies and must seek recourse to this court to declare the above described procedure to be discriminatory, arbitrary, and capricious.

WHEREFORE, Plaintiffs pray for judgment declaring:

(a) For a hearing and review of the procedure followed in

these cases;

8a

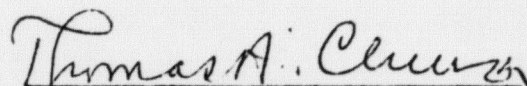
(b) For a judgment declaring that the acts of the District Director of the Immigration Service are illegal and unconstitutional;

(c) That both plaintiffs as refugees are prima facie entitled to the protection afforded by the asylum regulation;

(d) For an order staying further proceedings against these plaintiffs, pendente lite.

(e) For such other and further relief as may be appropriate.

Respectfully submitted.


THOMAS A. CHURCH
Attorney for Plaintiffs

94 Bayard Street
New York, NY 10013
Telephone: (212) RE2-9237

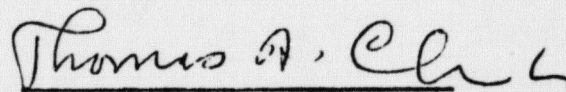
Dated at New York, New York

this 29th day of June, 1976

STATE OF NEW YORK)
CITY OF NEW YORK) SS.:
COUNTY OF NEW YORK)

THOMAS A. CHURCH, of 94 Bayard Street, New York, NY 10013, being duly sworn, deposes and says as follows:

That the foregoing, being the contents of the matter in the within action, has been persued and read by him as Plaintiffs' attorney, and the same are known to be true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.


THOMAS A. CHURCH

SWORN TO AND SUBSCRIBED BEFORE ME
this 29th day of June, 1976


Notary Public for the State of New York
My Commission Expires March 31, 1977

AFFIDAVIT OF THOMAS A. CHURCH ANNEXED TO FOREGOING COMPLAINT
UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF NEW YORK

-----X
HUI, YING LAI (A17 540 719) :
and :
SHEK, LAP KIN (A15 196 208) :
Plaintiffs :
v. :
MAURICE F. KILEY, as District Director for :
the Immigration and Naturalization Service, :
New York District, United States Department :
of Justice. :
Defendant :
-----X

THOMAS A. CHURCH, attorney for the above Plaintiffs, respectfully alleges:

1. That the reason this application is made by an Order to Show Cause instead of the usual Notice of Motion is that one of the Plaintiffs, Lap Kin SHEK, will be deported from the United States before the motion could be heard.
2. That no previous application for the specific relief sought herein has been made to this or any other court of competent jurisdiction upon the facts set forth herein.
3. Plaintiffs have exhausted each and every one of their administrative remedies and must seek recourse to this court to declare the above described procedure to be discriminatory, arbitrary, and capricious.

TH A C L L.S.
THOMAS A. CHURCH
Attorney for Plaintiffs
94 Bayard Street
New York, NY 10013

Sworn to before me
this 29th day of June, 1976.

LAZARUS SANGIKARDI
~~LAWRENCE~~
Notary Public

HUI'S ORDER TO SHOW CAUSE

10a

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of

HUI, YING LAI

aka HUI HEN, Luis Woo - Ramirez
Respondent.

To: Ying Lai Hui

(name)

File No. A17 540 719

13 Market Street, Apt 11, New York, New York
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of China
and a citizen of Mexico;
3. You entered the United States at Calxico, California on
or about June 12, 1961;
(date)
4. At that time you were admitted as a nonimmigrant visitor for
pleasure and were authorized to remain in the United States
until June 14, 1961.
5. You remained in the United States after June 14, 1961 without
authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant
to the following provision(s) of law:

Section 241(a) (2) of the Immigration and
Nationality Act, in that, after admission as a
nonimmigrant under Sec. 101(a) (13) of said act
you have remained in the United States for a
longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the
Immigration and Naturalization Service of the United States Department of Justice at
20 West Broadway, New York, New York 10th Floor
on December 21, 1967 at 1:00 p.m. and show cause why you should not be deported
from the United States on the charge(s) set forth above.

Dated: December 14, 1967

Form I-221
(Rev 3-30-67)

IMMIGRATION AND NATURALIZATION SERVICE

Sol Martin

(signature and title of issuing officer)
DEPUTY DISTRICT DIRECTOR
NEW YORK DISTRICT
(City and State)

(over)

EXCERPTS OF TRANSCRIPT OF HUI'S DEPORTATION HEARING

11a

* * *

when he entered the United States. Mr. Ruggiero, are you ready?

MR. RUGGIERO: Yes sir. On the basis of the testimony given here today, the government respectfully requests the country of Mexico in the event of deportation and Hong Kong in the alternative.

IMMIGRATION JUDGE TO RESPONDENT

Q I advise you that in the event an order of deportation should become necessary in your case I will direct your deportation first to the country of Mexico, as you admit, your place of citizenship, and in the alternative to Hong Kong, where you resided from 1950 to 1954 and where your family presently resides. Do you understand what I'm telling you?

A I understand.

Q Do you make any claim that you would be persecuted by reason of your race, religion or political opinion if you were deported to either Mexico or Hong Kong?

A I am not afraid to go to either place. I'm only a poor working man, although I am against Communism.

IMMIGRATION JUDGE: Anything further either of you wishes to present?

MR. RUGGIERO: No, the government has nothing further to present.

IMMIGRATION JUDGE: Mr. Bernstein?

COUNSEL: No.

IMMIGRATION JUDGE TO RESPONDENT

Q How old are you?

A 41.

NOTE: AT THIS POINT IN THE PROCEEDINGS THE IMMIGRATION JUDGE DELIVERED AN ORAL STATEMENT OF HIS DECISION IN THIS MATTER. THIS HAS BEEN TRANSCRIBED SEPARATELY AND IS ATTACHED.

-6-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

SHEK'S ORDER TO SHOW CAUSE
UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

12a

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of

SHEK LAP KIN

Respondent.

To: Shek Lap Kin

(name)

File No. A15 196 208

c/o Detention Quarters, New York

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of China
and a citizen of Republic of China on Taiwan;
3. You ^{arrived in} entered the United States at Baltimore, Maryland on
or about April 3, 1972;
(date)
4. At the time of your arrival, you were examined and refused permission to land temporarily as a crewman;
5. You entered the United States on April 3, 1972 at Baltimore, Maryland after you were refused permission to land temporarily as a crewman.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you are in the United States in violation of law, ~~to wit~~, Section 252(a) of that Act, by reason of your having entered the United States after you were refused permission to land temporarily as a crewman.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at 20 W. Broadway, New York, N.Y., 11th floor on September 19, 1972 at 8:45 a.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: September 18, 1972

Form I-221
(Rev. 3-30-67)

IMMIGRATION AND NATURALIZATION SERVICE

(signature and title of issuing officer)

ACTING DISTRICT DIRECTOR, NEW YORK DISTRICT

(City and State)

(over)

DECISION
(pp. 13a-14a)
UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

13a

File: A17 540 719 - New York

December 21, 1967

In the Matter of)

YING LAI HUI)

aka

HUI HEN)

aka

LUIS WOO-RAMIREZ)

-Respondent-)

IN DEPORTATION PROCEEDINGS

CHARGE: I&N Act - Section 241(a)(2) 8 USC 1251(a)(2) - nonimmigrant visitor - remained longer

APPLICATION: Voluntary departure

IN BEHALF OF RESPONDENT

Samuel Bernstein, Esq.
20 East 46th Street
New York, N.Y. 10017

IN BEHALF OF SERVICE

John P. Ruggiero, Esq.
Trial Attorney
New York, N.Y. 10007

ORAL DECISION OF THE IMMIGRATION JUDGE

This record relates to a 41 year old married, male alien. He has admitted to the allegations, as alleged in the Order to Show Cause, as being a native of China and a citizen of Mexico, who entered the United States at Calexico, California on or about June 13, 1961 as a nonimmigrant visitor for pleasure authorized to remain in the United States to June 14, 1961. He has admitted that he remained in the United States beyond that date without authority. Respondent's deportability has been conceded. I have found that the charge in the Order to Show Cause has been fully sustained. The respondent made no designation as to the country he desires to be sent if deported.

Application has been made for voluntary departure in lieu of deportation.

The record shows no adverse information reflecting on the moral character of the respondent for the past five years. He has been inconsistent in his testimony concerning his ability to depart promptly. Initially he stated that he would not leave the United States and wanted to remain here. Subsequently, upon urging by his counsel, the respondent testified that he would leave the United States. He thereafter stated that he did not have the funds with which to meet the cost of his departure. This was followed by respondent's testimony that he had \$1,000 and will leave the United States when and as required. Assuming that the respondent's testimony as corrected is the truth and he is sincere in his intent to leave promptly from the United States without expense to the government, it may be found that he is eligible for the relief of voluntary departure. He will be extended the privilege of voluntary departure.

There is some testimony on the record by which respondent raises an issue as to the legitimacy of his Mexican citizenship. This is not to be adjudicated in this proceeding. That matter is one that can only be determined by the Mexican government.

The Service has requested an alternate order of deportation to Hong Kong. The respondent makes no claim of persecution by reason of race, religion or political opinion if deported either to Mexico or Hong Kong.

ORDER: IT IS ORDERED that in lieu of an order of deportation respondent be granted voluntary departure without expense to the government within such time as the district director shall determine and under such conditions as the district director shall direct.

HUI'S REQUEST FOR ASYLUM IN UNITED STATES

(IMMIGRATION AND NATURALIZATION SERVICE) (pp. 15a-18a)

15a

REQUEST FOR ASYLUM
IN THE UNITED STATES

INS Office:

Date: Nov 5, 1975

A# 17 540 719

(Execute in Duplicate)

INSTRUCTIONS: This form must be presented to the office of the Immigration and Naturalization Service having jurisdiction over your place of address.

NOTE: If additional space is needed to complete answers, use a separate sheet and identify your answer with the number of the corresponding question.

1. NAME (Last, in CAPS) (First) (Middle)		2. Nationality	
HUI, (許) Ying (英) Lai (禮)		China	
3. Address in United States		4. City & Country of Birth	
13 Market Street, Apt 11 New York, New York 10003		Hoiping, China.	
5. Date of Birth (Mo./Day/Year)			
June 30 1926			
6. All other names used at any time			
Louis Woo RAMIREAZ (immigration paper name for Mexico)			
7. Family Members (Names of Spouse and Children)		Place of Birth	Date of Birth
HUI Poon Shee		Hoiping, China	Dec 1948
HUI Chau Tim		Hoiping, China	26 yrs old
HUI, Chi Keung		Hoiping, China	22 yrs old
HUI Wai Wan		Hoiping, China	19 yrs old
		Country Where Located	Included in Asylum Request, if in U.S. (Yes or No)
		Hongkong	No
		Hongkong	
		Hongkong	
		Hongkong	
8. Social Security Number		9. Occupation	10. ☒ Male ☐ Female
128-36-9923		Cook	
11. Addresses for Past Five Years:			
July 5, 1961: Los Angeles, California			
July 19, 1961 to present. New York, New York			
12. Other Relatives in U.S. (Names)		(Address)	Relationship
None			Immigration Status
13. Last Arrival in U.S. (Date)		Place	Type of Entry
July 5, 1961		Los Angeles, Ca	Tourist
Date to Which Admitted or Last Extended:			
6months after 7/5/1961			
United States Visa issued (Date)		Place	Type
Approx July 1 1961 Mexico			B-2
14. Travel Document: Type and Number		Date Issued	Valid to: (Date)
Mexican Passport with INS file		unknown	unknown
Restrictions on Travel Document		Cost	Obtained by: ☒ Yes ☐ No
None		unknown	by father, deceased.
			Any difficulty obtaining? ☒ Yes ☐ No
			Explain: said to have done thru unlawful means on some consideration.
15. Was Exit Document Required from Home Country?		16. Are you admissible to any other country?	
☒ Yes ☐ No		☐ Yes ☐ No	
My bona fide country of origin is mainland China. The communists already took over. I escaped from it. Exit Permit is required for every one.		If "Yes" explain: Now not feasible.	

17. If you return to your country, for what specific reasons do you believe you will be persecuted?*****in my ultimate banishment.

☐ Race ☐ Religion ☐ Nationality ☐ Political Opinion ☐ Membership in a particular social group

☒ Other *My home country is Mainland China now under communist domination. I fled from Hong Kong by the legal procedure. I waited for imm. papers to enter Mexico. I did not leave Hong Kong by the legal procedure. If returned to Hong Kong, govt red tape would result in my being executed for the escape incident.*

18. Have you or any member of your family ever been detained, interrogated, arrested, convicted and sentenced, or imprisoned because of the above?

☐ Yes ☒ No

If "Yes", cite instances:

Have you ever been arrested for any other reasons?

☒ Yes

☒ No

If "Yes", please list:

I was arrested for 2 days because I came from a candidate party - in 1950

19. Why in your opinion were the actions cited in Item 18 above taken against you?

Not applicable

20. Did you belong to any organization(s) which were considered hostile to the interests of your Home Country?

☐ Yes ☒ No

If "Yes", explain

21. Have you ever expressed political opinions or acted in a manner which was regarded by the authorities as opposed to the interests of your Home Government?

☐ Yes

☒ No

If "Yes", explain:

22. If you base your claim for asylum on current conditions in your country, do these conditions affect your freedom more than the rest of that country's population?

☐ Yes

☒ No

If "Yes", explain:

I wouldn't know. I escaped because I wanted to survive.

23. Have you taken any actions that you believe will result in persecution in your Home Country? ☒ Yes ☐ No If "Yes", explain:

In the opinion of a totalitarian state such as Communist China, for one, the offense of escaping from the state or country is regarded as grave as treason. Although my escape was not politically motivated, nonetheless, I would be persecuted for having escaped if I were to be sent back to communist China. After the escape, I took haven in Hongkong, where I awaited for my travel documents to come from my father in Mexico for me to enter Mexico. Having had the travel documents sent to me by my father, I left Hongkong without any intent of ever to return there. I did not conform to the procedure of departure, in the eyes of law, I had abandoned the temporary protection.

24. Has your family suffered or been intimidated in any way because of your absence or your actions? ☐ Yes ☒ No

If "Yes", explain:

(The threat of ultimate deportation from H.K. wld. be hard to eliminate.)

25. Do you base your claim for asylum on the fact that you overstayed your leave abroad? ☐ Yes ☒ No

If "Yes", explain:

26. Has your request for asylum become known to the authorities of your Home Country? ☐ Yes ☒ No

If "Yes", how has this become known?

What do you think would happen to you if you return?

As stated above, if returned to mainland china, I would face persecution.

Why?

For reasons as stated. (See Item 23 herein)

27. Have you ever applied for asylum in any other country? ☐ Yes ☒ No

If "Yes", explain what happened:

28. Can you provide any documentation or evidence (letters, newspapers, court orders, etc.) in support of your request? ☐ Yes ☒ No
If "Yes", list and attach:

None, except my own affidavit which will be furnished if and when called for.

29. Is there any other information relative to your case not covered by the above questions? ☐ Yes ☒ No If "Yes", explain.

Except that whatever document the Imm & Natz Service has obtain for me to travel to Hongkong would be only valid for a limited entry and stay in Hongkong after my repatriation there. The resulting step to follow an official inquiry by the government officials of Hongkong as to how I departed from Hongkong and why I did not follow the prescribed procedure for any departure, would be ultimate banishment from Hongkong for me. I couldn't go back to Mexico because of the false passport delima.

30. I do swear (affirm) that I know the contents of this application signed by me and that the statements herein are true and correct.

Spring Kai Hui
(Signature of applicant)

Subscribed and sworn to (affirmed) before me this 7 day of Nov, A.D. 1975

at 20 W Bonding St. N.Y.

Paul Kears
(Signature of Immigration Officer administering oath)

DPC
(Title)

(To be executed at time of interview)

Action by District Director:

☐ Granted

☒ Denied

Paul Kears
(Interviewing Officer)

Maurice F. Kelly
(District Director)

Date: 1/7/75

Date: Jan 28, 1976

H. H. H. H. H.
mike spiles

SHEK'S REQUEST FOR ASYLUM IN UNITED STATES

19a

(pp. 19a-22a)

OMB No. 043-R0560

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICEREQUEST FOR ASYLUM
IN THE UNITED STATESINS Office: NY, NY
Date: Dec. 1, 1975
A# 15 196 208

(Execute in Duplicate)

INSTRUCTIONS: This form must be presented to the office of the Immigration and Naturalization Service having jurisdiction over your place of address.

NOTE: If additional space is needed to complete answers, use a separate sheet and identify your answer with the number of the corresponding question.

1. NAME (Last, in CAPS) (First) (Middle) SHEK, Lap Kin			2. Nationality China		
3. Address in United States 91 Henry Street, New York, N.Y. 10002		4. City & Country of Birth Foochow, China		5. Date of Birth (Mo./Day/Year) 11/21/1938	
6. All other names used at any time No others					
7. Family Members (Names of Spouse and Children) Place of Birth Date of Birth Country Where Located Included in Asylum Request, if in U.S.? (Yes or No) NO					
CHAN Yuet Ying (wife)		China	1938	Hong Kong	no
Chun Yee (son)		Hong Kong	13 yrs.	" "	no
Chun Luen (son)		"	12 yrs.	" "	no
Mee Fong (d.)		"	5 yrs.	" "	no
Chun Kwon (son)		"	3 yrs.	" "	no
8. Social Security Number 094-50-3410		9. Occupation Cook		10. ☒ Male ☐ Female	
11. Addresses for Past Five Years: 91 Henry St., New York, N.Y. 10002 10/1974 to date 302 Mott St., New York, N.Y. 4/1972 to 10/1974 Fok Lai Estate, Wing Hong House, 4/f1, Rm.#527- 1966 to 1972					
12. Other Relatives in U.S. (Names) (Address) Relationship Immigration Status NONE --- ---					
13. Last Arrival in U.S. (Date) Place (Type of Entry) Date to Which Admitted or Last Extended: 4/3/1972 Baltimore, Md. crewman 29 days United States Visa Issued (Date) Place Type ---					
14. Travel Document: Type and Number Date Issued Valid to: (Date) Hong Kong crewman's book 1959 unknown Restrictions on Travel Document Cost Obtained by: Any difficulty obtaining? Unable to travel other than as a crewman If "Other" explain: ☒ Self ☐ Other ☐ Yes ☒ No Explain:					
15. Was Exit Document Required from Home Country? ☐ Yes ☒ No If "Yes" explain:					
16. Are you admissible to any other country? ☐ Yes ☒ No If "Yes" explain:					

17. If you return to your country, for what specific reasons do you believe you will be persecuted?

- ☐ Race ☐ Religion ☒ Nationality ☒ Political Opinion ☐ Membership in a particular social group
☐ Other

18. Have you or any member of your family ever been detained, interrogated, arrested, convicted and sentenced, or imprisoned because of the above?
☐ Yes ☒ No If "Yes", cite instances:

Have you ever been arrested for any other reasons? ☐ Yes ☒ No If "Yes", please list:

19. Why in your opinion were the actions cited in Item 18 above taken against you?

20. Did you belong to any organization(s) which were considered hostile to the interests of your Home Country?
☐ Yes ☒ No If "Yes", explain

21. Have you ever expressed political opinions or acted in a manner which was regarded by the authorities as opposed to the interests of your Home Government? ☐ Yes ☒ No If "Yes", explain:

22. If you base your claim for asylum on current conditions in your country, do these conditions affect your freedom more than the rest of that country's population? ☒ Yes ☐ No If "Yes", explain:

Because I am not a British Subject and is considered as a refugee in Hong Kong.

23. Have you taken any actions that you believe will result in persecution in your Home Country? ☐ Yes ☒ No If "Yes", explain:

24. Has your family suffered or been intimidated in any way because of your absence or your actions? ☐ Yes ☒ No
If "Yes", explain:

25. Do you base your claim for asylum on the fact that you overstayed your leave abroad? ☒ Yes ☐ No If "Yes", explain:

I believe I would be penalized for leaving my vessel. It would be very difficult for me to obtain employment.

26. Has your request for asylum become known to the authorities of your Home Country? ☐ Yes ☒ No If "Yes", how has this become known?

What do you think would happen to you if you return?

See No. 22 . I would again be forced into a life as a refugee because I fled China, unable to obtain work, and unable to travel on a document.

Why?

27. Have you ever applied for asylum in any other country? ☐ Yes ☒ No If "Yes", explain what happened:

28. Can you provide any documentation or evidence (letters, newspapers, court orders, etc.) in support of your request? ☒ Yes ☐ No
If "Yes", list and attach:

My affidavit.

29. Is there any other information relative to your case not covered by the above questions? ☐ Yes ☒ No If "Yes", explain.

30. I do swear (affirm) that I know the contents of this application signed by me and that the statements herein are true and correct.

X SHEK LAP KIN 石立建
(Signature of applicant)

Subscribed and sworn to (affirmed) before me this 2ND day of December, A.D. 1975
at 20 W BROADWAY NY NY

(To be executed at time of interview)

(Signature of Immigration Officer administering oath)

Supervision
officer
(Title)

Action by District Director:

☐ Granted

☒ Denied

John Coste
(Interviewing Officer)

Date: 12-2-75

Maurice H. Riley
(District Director)

Date: Dec 4, 1975

LETTER DATED DECEMBER 9, 1975 FROM MAURICE F. KILEY TO

23a

LAP KIN SHEK

A15 106 208 DB/JC

20 West Broadway
New York, New York 10007

December 9, 1975

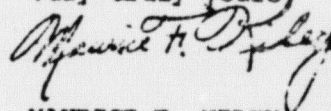
Lap Kin Shek
91 Henry Street Apt B-3
New York, N.Y. 10002

Dear Sir:

Reference is made to your request for political asylum submitted on December 2, 1975

This Service has determined that there is no basis for granting your request and has forwarded your application for an advisory opinion to the Department of State. You will be further advised. ✓

Very truly yours,



MAURICE F. KILEY
DISTRICT DIRECTOR
NEW YORK DISTRICT

cc: Thomas A. Church, Esq.
94 Bayard Street
New York, N.Y.

LETTER DATED FEBRUARY 6, 1976 FROM MAURICE F. KILEY TO
HUI YING LAI

24a

20 West Broadway
New York, NY 10007

A17 540 719 DB/PK

February 3, 1976

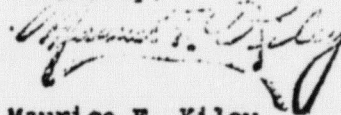
HUI Ying Lai
13 Market Street, Apt. 11
New York, New York 10003

Dear Sir:

Reference is made to your request for asylum submitted on
November 7, 1975.

This Service has determined that there is no basis for
granting your request and has forwarded your application for
an advisory opinion to the Department of State. You will be
further advised.

Sincerely,



Maurice F. Kiley
DISTRICT DIRECTOR
NEW YORK DISTRICT

cc: Thomas A. Church, Esq.

11-222

5. When these procedures were instituted the Service District Directors received so many dilatory Class 3 applications from Chinese aliens, based allegedly on their fears of prosecution in Hong Kong or of being returned to Mainland China, that OMA and the Service's Regional Commissioners agreed to allow the Service's District Directors to adjudicate these requests at the District Office and to enforce deportation without waiting for OMA's written opinions with respect to the merits of the request.

[6. While the plaintiffs have characterized this disparate treatment of asylum requests by Chinese aliens as arbitrary, discriminatory and violative of procedural due process, there were substantial reasons for its adoption. Once the determination was made by OMA that Chinese aliens deported to Hong Kong would not be prosecuted there or returned to mainland China, no purpose was served by having OMA review the District Director's denial of an asylum application based solely on these fears. Moreover, since the vast majority of these Chinese requests for asylum contained no other bases for relief, they were peculiarly suited to this form of adjudication. However, the fact is that this procedure is no longer used to adjudicate asylum requests which today are considered pursuant to the Service Operating Instructions as well as 8 C.F.R. § 103. —]

7. In January, 1975, when the Attorney General promulgated 8 C.F.R. § 108 pursuant to his authority under Section 101(a) of the Act, 8 U.S.C. § 1103(a), I studied its provisions as well as the strict language of our Operations Instructions. As a result, I directed, on my own initiative, that our adjudication procedures for these requests be modified to conform in all aspects with the new regulation and the Service Operating Instruction. In addition, to

assure that no injustice resulted from our prior policy, I directed that all Chinese aliens, who had submitted asylum requests under the old procedure, be allowed to submit new ones so that these requests could be reviewed under the requirements of the new regulations in the same manner in which asylum requests made by an alien of any other nationality would be considered. Both of the plaintiff's asylum requests were denied pursuant to our current procedures. }

8. Yet in their complaint, the plaintiffs initially claim the Service continues to adjudicate Hong Kong Chinese asylum requests differently from requests submitted by other applicants. Simply put, as I have just discussed, this allegation is false and the plaintiffs and their attorney know or should know it is false since they have the opportunity to inspect their administrative files pursuant to 8 C.F.R. 103.21. Today each and every asylum request is processed in the same manner. Moreover, any applicant who conceivably could be harmed by our prior policy (a group which does not include the plaintiffs since their applications were considered and denied under our present policy) has been given the opportunity to have his request reviewed pursuant to our current procedures.

9. In this regard another contention of the plaintiffs, that their applications were evaluated in a "factory like" manner which does not permit an individual consideration of asylum requests, is no more persuasive if it is examined against the review procedures which I instituted in this District and which are described in the following paragraphs.

10. When a request for asylum is made by an alien, after he has been found to be deportable and his deportation hearing has been closed, it is forwarded immediately to the deportation officer to whom the alien's

13. The five separate and distinct evaluations of asylum applications I have outlined are afforded to every application and were given to those submitted by the plaintiffs. [See Exhibits J and III attached to Government's affidavit]. Thus on five separate occasions their applications were found to be frivolous, without merit, and submitted solely to delay deportation. In light of the exhaustive consideration we voluntarily give to every asylum application, the plaintiffs' claim that they are processed in a factory like manner, which forecloses individual review, is unsustainable.

14. Similarly, the plaintiffs' other contention, that my form denial letter deprived them of "procedural due process" and failed to conform to the requirements of 8 C.F.R. § 103.3, is specious at best. Shortly after I had received each of the plaintiff's asylum requests and concluded that no basis existed for granting them, I notified each of my decision by letter and informed them that I had forwarded their requests to ONAA for its opinion. This denial represented the combined opinions of the four individuals at the Service (including myself) who had examined these applications. In addition, it clearly constituted sufficient notice to the plaintiffs of the reason their requests had been denied namely, that no basis existed on which to grant them. [While the denial may have been made on a form, the increasing number of frivolous applications which I receive necessitates the use of such a form. Moreover, the use of such a form denial is peculiarly appropos in such "Class 3" cases where the specific reason for the denial is that no basis exists to grant the relief requested and where, as a result, no additional reason could be set forth to further explain my decision.]

PAGE FROM AFFIDAVIT OF R.S. GROBAN IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

28a

ROC:11
11-222

* * *

A. The Service's Asylum Procedures Conform To All
Constitutional Requirements.

The United States Supreme Court and the Courts of this Circuit have steadfastly and continually affirmed Congressional exercises of its plenary power to establish criteria for the admission of aliens to this country. Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). This judicial approval has extended to the regulations promulgated by the Attorney General pursuant to his enforcement powers in Section 103 of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1103, and has been subject only to the requirement that the regulations be reasonably related to a valid governmental objective. San Andrews' Sons v. Mitchell, 457 F.2d 745, 748 (9th Cir. 1972); Noel v. Chapman, 508 F.2d 1023, 1028 (2d Cir.), cert. denied, 44 U.S.L.W. 3201 (October, 1975). In this context the Court need only examine the history of 8 C.F.R. § 108 and its relationship to other asylum provisions of the Act in order to establish its reasonableness.

Because 8 C.F.R. § 108 was promulgated so recently, there is to our knowledge no case law discussing its provisions or its history. Therefore, to ascertain the relationship for its existence, it is important to understand the background from which it originated. In 1972 Service and Diplomatic Officials had no mechanism to handle asylum requests which, due to the

learned during Chin Ming that far less of our time as well as the Court's time would be expended (and a more inclusive result obtained) by stipulating to join additional plaintiffs to this action than would be possible if the Government decided to contest each complaint and order to show cause on its merits. Moreover, we believe that this decision to accept stipulations was correct for, to date, we have signed 27 stipulations with plaintiffs' attorney, as well as Messrs. Barst and Mukanal in which 69 additional plaintiffs have agreed to have the results of their actions governed by this Court's determination in this action (Exhibit 1).

10. Finally, the Church affidavit's assertions ignore the real question in this action namely whether it is frivolous and has been instituted solely to delay the enforcement of valid orders of deportation against these plaintiffs as well as the 69 plaintiffs joined to this action. Moreover, the substantive portions of the Church affidavit, the Hui affidavit, and plaintiffs' 9(g) statement fail to refute any of the material allegations made by the defendant in its initial affidavit or Rule 9(g) statement. Thus the record now contains the following undisputed facts:

1. Each of these plaintiffs was given a deportation hearing at which they admitted they had no fear of being returned to Hong Kong (initial affidavit, paragraphs 8 and 27);
2. Each of these plaintiffs has family in Hong Kong who have lived there for many years and who have never been subject to persecution there or threatened with return to Mainland China (initial affidavit, paragraphs 4 and 24);
3. Each of these plaintiffs have been deportable for many years and have avoided deportation by submitting various administrative applications designed solely to frustrate the Service's efforts to deport them (initial affidavit, paragraph 37);

**AFFIDAVIT OF T.A. CHURCH IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT (pp. 29a-32a)**

29a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUI, YING LAI (A17 540 719) and
SHEK, LAP KIN (A15 196 203),

Plaintiffs,

-against-

HAURICE F. KILEY, as District Director
for the Immigration and Naturalization
Service, New York District, United
States Department of Justice,

Defendant.

AFFIDAVIT IN
OPPOSITION TO
MOTION FOR
SUMMARY JUDGMENT

76 Civ. 2981 (WK)

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

THOMAS A. CHURCH, being duly sworn, deposes and says:

1. I am the attorney representing these two (2) plaintiffs, HUI, YING LAI and SHEK, LAP KIN.
2. I hereby reaffirm those statements made by me in the Verified Complaint filed on June 29, 1976, and also the allegations which appear in the attached Rule 9(g) Statement made in answer to the Government's motion for Summary Judgment.
3. I wish to stress again that the only issues raised before this Court are procedural ones: (1) were the denials of the applications made under the recent asylum regulation (8 C.F.R. 108) proper in that no specific reasons were given for the denials; and (2) were the applications considered individually or as a group, without individual consideration and in a discriminatory fashion.
4. It is my firm belief that both of these plaintiffs are refugees, either under Section 203(a)(7) of the Immigration and Nationality Act 8 U.S.C. 1533 (a)(7), or under Article 1 of the Protocol (Treaty) relating to refugees and therefore, should be entitled to the protection afforded under 8 C.F.R. 108.

5. However, this Court is not requested to make a finding as to the substantive merits of the applications, but rather, to inquire as to whether these plaintiffs are entitled to a more proper and lawful consideration of these applications.

6. The issues raised are simple. The voluminous material submitted by the Government is substantially non-responsive.

7. The selected material from the Government's administrative files were submitted, in my opinion:

- (1) to color and prejudice these cases; and
- (2) to confuse the Court.

8. Some of the material is not true. The attached affidavit of plaintiff Hui, refutes the Government's unsupported statement, that he emigrated from China to Hong Kong with his family, and then left his family to go to Mexico.

9. Paragraphs 16 and 17 of the Government's Rule 9(g) Statement would lead this Court to believe that the instant issues were previously litigated by Ming v. Marks 505 F.2d 1170 (2d Cir. 1974). The attached copy of the stipulation involving plaintiff Hui with respect to the Ming case (Plaintiffs' Exhibit 1"), shows that both the plaintiff and the defendant agreed to be governed by the determination on appeal of the Chim Ming and Lam Yim Yim, et al cases. A mere reading of this opinion makes it evident that the instant issues were not determined by that case and that the parties should not be prevented from seeking whatever other relief which might be available. The asylum regulation became effective shortly thereafter.

10. This case was initiated by the service of a Verified Complaint filed on the 29th day of June, 1976. It originally contained a restraining provision which would normally require my personal appearance before this Court accompanied by the Special Assistant United States Attorney in charge of the case. At that time, the Government could have brought this Court's attention to the alleged "frivolous and dilatory" nature of this action. But, the Government declined to do so, conceding that these issues had not been previously litigated and that a novel question of law had been raised under a new regulation. As a result, the restraining provision was deemed unnecessary. The Special Assistant, then in charge directed that plaintiff, Shek's surrender notice be cancelled and that his deportation be deferred.

11. When a misunderstanding arose as to the possibility of stipulating other cases posing the same issues, I suggested that we personally appear before this Court in order to resolve the dispute. The Government could, at that time, have interposed its objection that this action is "frivolous and dilatory". Instead, at a conference at which Special Assistants, Miss Mary Maguire and Mr. Thomas Belote and myself were present, it was again agreed that the instant action posed novel issues and should be litigated.

12. Several months ago, I submitted the attached Memorandum of Law to the United States Attorney's office further setting forth my legal position.

13. Now, five (5) months after the complaint was filed, and without prior answer, the Government moves for summary judgment alleging, as I understand it that the action is "frivolous and dilatory"; and therefore not deserving of the attention of this Court.

14. This, despite the statement in the defendant's Memorandum of Law (at page 9):

"Because 8 C.F.R. 108 was promulgated so recently, there is to our knowledge no case law discussing its provisions or its history."

15. Some of the material in the docketed record, selected by the Government from the plaintiffs' files was not previously made available to me. Much of it is hearsay, irrelevant and prejudicial. No objection is made to the introduction of these items. However, the Court is requested to determine what material is pertinent.

16. One item in plaintiff Hui's file and not submitted by the Government was a letter which I submitted at the time of Hui's asylum interview in December 1975. Attached to said letter submitted by me were certain newspaper clippings, permissible under the procedure. The clippings concerned the granting of asylum to a famous Czechoslovakian tennis star. (Plaintiffs' Exhibit 2). I had hoped, by the submission of the above letter with newspaper clippings attached thereto, to draw attention to the uneven application of the asylum procedure. The letter and clippings were completely ignored by the Government.

WHEREFORE, your deponent prays that this Court address itself to those pertinent and material issues raised in the complaint in arriving at a true and just determination, i.e. that these cases be referred back to the Immigration and Naturalization Service for a more appropriate consideration, and for such other and further relief as to this Court seems just and proper.

Sworn to before me this

21 day of January, 1977.

Thomas A. Church
THOMAS A. CHURCH

Edythe L. O'Dood

EDYTHE L. O'DOOD
Notary Public, State of New York
No. 31,254100-0000, in New York County
Commission Expires March 30, 1977

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT:

EXHIBIT 1 - STIPULATION

33a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUI, Ying Lai (A17 540 719)

-against-

SOL MARKS, as District Director for Immigration
and Naturalization Service of the District of
New York.

Defendant.

STIPULATION OF SETTLEMENT
AND DISMISSAL

WHEREAS the facts and legal issue in the above captioned matter are similar to the facts and legal issued in :-

CHIM MING, vs. SOL MARKS, et al
Civil Action No. 73 CIV 545;

LAM YIM YIM, et al, vs. SOL MARKS, et al
Civil Action No. 73 CIV1342

presently on appeal to the United States Court of Appeals, Second Circuit.

IT IS HEREBY STIPULATED AND AGREED between the undersigned, as Attorneys for the respective parties herein, that

1) The Above-captioned matter now pending before this Court will be governed by the determination on appeal by the CHIM MING, AND LAM YIM YIM, et al, cases.

2) That pending said determination on appeal, the deportation of the plaintiffs in this matter shall be stayed by the Immigration and Naturalization Service.

3) That the above entitled action be and the same is hereby dismissed.

THE ORIGINAL HEREOF THOMAS A. CHURCH
WAS SIGNED BY: Attorney at Law

THOMAS A. CHURCH
Attorney for Plaintiff

Paul J. Curran
United States Attorney for the Southern
District of New York
Attorney for Defendant

BY:

LYDIA E. MORGAN
Special Assistant United States
Attorney

EXHIBIT 2 - LETTER DATED DECEMBER 15, 1975 FROM T.A. CHURCH
TO IMMIGRATION AND NATURALIZATION SERVICE

34a

THOMAS A. CHURCH (pp. 34a-35a)

ATTORNEY AT LAW
64 BAYARD STREET
NEW YORK, N. Y. 10013

RECTOR 2-9237

律師事務所

December 15, 1975

Immigration & Naturalization Service
20 West Broadway
New York, NY 10007;

The Department of State
Washington D.C.

Re: YING IAI, HUI A17 540 719 DB/PK

Gentlemen:

On the basis of the attached newspaper clippings, it would appear that the Immigration Service has set a new standard in connection with asylum applications. These clippings concern the asylum application of Miss Navratilova, a tennis star of international repute.

In view of the new regulation pertaining to asylum cases and the fact that the Service is entertaining these applications, we expect due consideration pertaining thereto, including the material submitted to the Department of State as well as the basis for that decision.

The attached clippings show a clear predisposition to accord relief in situations where a renowned athlete is concerned, as against those people who have really suffered because of their desire to remain in a free country.

To apply a different standard to this Chinese crewman from that/a tennis player, who, according to this article is financially secure and able to travel, would be extremely unfair.

Enclosed you will find the following items:

- Item #1 The New York Times, dated September 7, 1975.
- Item #2 The London Times, dated September 8, 1975, stating that the applicant's decision had "....nothing to do with politics or money."

..../2

35a

THOMAS A. CHURCH
ATTORNEY AT LAW
54 BAYARD STREET
NEW YORK, N. Y. 10013

RECTOR 2-9237

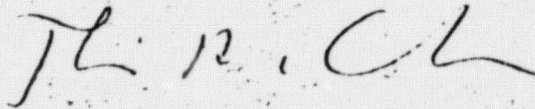
律師事務所

- 2 -

Item #3 The New York Post, September 8, 1975,
to the same effect.

Thanking you in advance for the careful consideration
you give this matter, I remain

Yours sincerely,



THOMAS A. CHURCH

TAC/al
Enclosures

AFFIDAVIT OF HUI, YING LAI IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT

36a

(pp. 36a-38a)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUI, YING LAI (A17 540 719)
and
SHEK, LAP KIN (A15 196 208)
Plaintiffs

- v -

MAURICE F. KILEY, as District Director for
the Immigration and Naturalization Service,
New York District, United States Department
of Justice.

Defendant

AFFIDAVIT IN OPPOSITION
OF MOTION FOR SUMMARY
JUDGMENT

76 Civ. 2800 (WK)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

HUI, YING LAI, being duly sworn deposes and says:

That I make this sworn statement for the purpose of further
clarifying certain issues that I understand are now before the Court.

1. Although my family now resides in Hong Kong, they did
not leave with me when I escaped from the Mainland of China in 1951. It
was impossible at that time for them to do so.

2. When the Chinese Communists overran China in 1949, my
family were business people, property owners.

3. I was detained by the Communists for two (2) days. They
returned me from Canton City, where I was operating our family restaurant,
to my native village, Sun Tin (新田村). They forced me to sign a
statement relinquishing our property to the tenants.

4. They also confiscated the restaurant my grandfather owned.
Eventually they confiscated all of our property.

5. I felt that I would be assigned to perform manual labor
and decided to flee.

6. In 1951, I paid the owner of a small boat to take me
to Macao. We left at night. Our vessel was fired on from the Mainland.

7. I stayed two (2) days in Macao and went to Hong Kong. I lived in Hong Kong from 1951 until 1954. My father had written to me that I could come to Mexico and join him. Since the Communists were lenient at that time, shortly before I left Hong Kong, my wife arranged to obtain a 90-day permit for me to visit the family. I visited her for three (3) weeks, and then returned to Hong Kong. I left Hong Kong for Mexico in the early part of 1954.

8. Since 1954, I have not seen my wife, Poon Yiu Shun, (潘堯順). I have never seen my youngest child, a daughter, Hui Wai Wan (許維穩), since she was born after my departure. I have not seen my other children in all those years. My oldest child, a son, Hui Chau Tim (許就添), was five (5) years old when I last saw him.

9. Following my father's instructions, I went to Mexico in 1954 to join him as Luis Woo RAMIREZ, a Mexican citizen. I subsequently used this identity to enter the United States in 1961.

10. Shortly after I left Hong Kong and joined my father in Mexico, my wife was permitted to ~~enter~~ Hong Kong with our children. She has remained there since.

11. I have remained in the United States since I came here in 1961, and have always worked as a cook.

12. In 1967, I filed an application for a visa as a cook, because I wanted to legalize my entry. Although the Immigration Service agreed that I was eligible for a visa, because of the long delay in processing my case, my approved visa petition expired.

13. Both the American Consulates in Portugal and Canada agreed to accept me and issue me a permanent resident visa. But for the long delay in processing my case, I would be a lawful permanent resident here today.

14. Because of the hardships that my family and I have suffered in the past, I would like to reaffirm the statement made by me during my original deportation hearing held on December 21, 1967, that

I am against Communism.

15. I would like to correct an error made by me. I left China in 1951 rather than 1949 or 1950.

Hui Ying Lai L.S.
HUI YING LAI

Sworn to before me
this 15th day of January, 1977.

Lazarus D. Sanguinetti

LAZARUS D. SANGUINETTI
Notary Public, State of New York
No. 24-870000 Qual. in Kings County
Commission Expires March 30, 1978

I, ANNE LAM, of 94 Bayard Street, New York, New York 10013, being duly sworn, do hereby depose that I am well versed in both the Chinese and English languages; that I have explained and translated this entire affidavit of HUI Ying Lai, to the deponent, to the best of my knowledge and ability.

Anne Lam

State of New York
City of New York

Sworn to before me this
15th day of January, 1977

Lazarus D. Sanguinetti

LAZARUS D. SANGUINETTI
Notary Public, State of New York
No. 24-870000 Qual. in Kings County
Commission Expires March 30, 1978

PLAINTIFF'S RULE 9(g) STATEMENT (Filed January 25, 1977)

39a

UNITED STATES DISTRICT COURT (pp. 39a-41a)
SOUTHERN DISTRICT OF NEW YORK

-----X
HUI, YING LAI (A17 540 719) and
SHEK, LAP KIN (A15 196 208)

Plaintiffs,

-against-

PLAINTIFF'S
RULE 9(g)
STATEMENT

MAURICE F. KILEY, as District
Director for the Immigration and
Naturalization Service, New York
District, United States Department of
Justice,

76 Civ. 2981 (WK)

Defendant.
-----X

1. Pursuant to Rule 9(g) of the General Rules for the District Court for the Southern District of New York, the plaintiffs by their attorney, THOMAS A. CHURCH, submit this statement in opposition to the defendant's motion for Summary Judgment.

2. There is nothing in the Government's nine (9) page thirty two (32) paragraph Statement which is clearly responsive to any of the material contained in either the plaintiffs' complaint or the Memorandum of Law submitted by the plaintiffs to the United States Attorney's office several months ago.

3. The Government's 9(g) statement contains a number of misleading and inaccurate statements.

4. In view of the Government's failure to answer within the allotted sixty day period as required by Rule 12(a) of the Federal Rules of Civil Procedure; and in view of the non-responsive nature of the Motion for Summary Judgment which was

filed more than five (5) months after the complaint, and the issues of fact raised therein, it is requested that said motion be denied and that judgment be awarded the plaintiffs as a matter of law.

5. Should the Court deem the defendant's motion to be one for Judgment on the Pleadings, or otherwise, it is submitted that the facts alleged in the Complaint "be deemed admitted" since they have not been controverted.

6. Briefly, the plaintiff's Complaint alleges:

(a) That both of these plaintiffs were born in mainland China, found their way to Hong Kong, are stateless and appear to be "refugees".

(b) That these two (2) plaintiffs (one admitted to the United States as a visitor, the other deserted as a crewman), are now both unlawfully within the United States.

(c) That both plaintiffs made individual applications under the first regulation on asylum, 8 C.F.R. 108, recently promulgated by the Attorney General which became effective on January 29, 1975.

(d) Both applications were accepted by the Immigration and Naturalization Service and the applicants were duly interviewed and apparently processed.

(e) Both plaintiffs were notified that their applications were denied in identical language, as follows:

"This Service has determined that there is no basis for granting your request and has forwarded your application to the Department of State. You will be further advised."

(f) It appears that all the applications filed by Hong Kong Chinese were denied in identical language

7. The two procedural issues raised were:

(a) It was contended that the notices of denial given the plaintiffs were inadequate in that they did not meet the requirements of the controlling regulations, 8 C.F.R. 103.3, in that the applicants were not "given written notice setting forth the specific reasons for such denial ..." (emphasis supplied).

(b) Because of the identical language used in all of these applications, and because of other factors in their treatment, it was obvious that these applications were not given individual consideration but were treated as a group, in a discriminatory fashion.

THE PLAINTIFFS DISAGREE WITH THE
FOLLOWING MATERIAL CONTAINED IN
THE GOVERNMENT'S 9(g) STATEMENT:

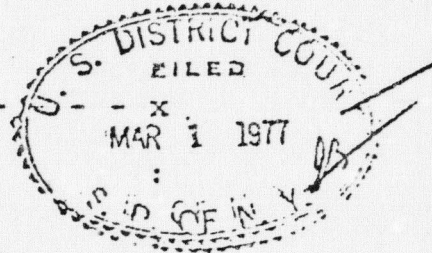
8. As to Paragraphs 2 and 3 - Although not material, plaintiff HUI did not leave his wife and children in Hong Kong. (Mr. Hui's attached affidavit explains the circumstances of departure from China and why he could not possibly take his family with him).

9. As to Paragraph 4 - Immaterial. It is conceded that HUI's Mexican passport was fraudulent, however, it is to be noted that he was not charged by the Immigration Service with this, nor was he found deportable because of this. He was merely charged and found deportable as an overstay visitor. (See the comment

M. Y. Hui

76-2247

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



HUI, YING LAI (A17 540 719) and
SHEK, LAP KIN (A15 196 208),

Plaintiffs,

- against -

MEMORANDUM AND ORDER

MAURICE F. KILEY, as District
Director for the Immigration and
Naturalization Service, New York
District, United States Department
of Justice,

76 Civ. 2890

Defendant.

KNAPP, D.J.

Plaintiffs, claiming to be refugees from the People's Republic of China, sue to stay their deportation on the basis of alleged inadequacies in the processing of their 8 CFR §108 asylum applications; viz., (1) the failure to meet 8 CFR §103.3's notice requirement and (2) the failure to give individual consideration to each applicant. In response, defendant moves for summary judgment, attorney fees and costs. Before discussing plaintiffs' allegations, below, a chronology of the previous procedural steps taken in these cases will be helpful.

I. FACTS

HUI. Ying Lai Hui is a native of mainland China where he was born in 1926. In 1951 Hui arrived in Hong Kong and three years later travelled to Mexico. From there, on June 13,

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MAR 1 1977

1961, he illegally entered the United States. Eventually, on October 11, 1967, he brought himself to the attention of the Immigration and Naturalization Service (INS) by filing an immigration preference petition based on alleged employment as a cook. From this point, his applications to stay in the United States took the following course:

December 14, 1967. he was interviewed by the INS concerning his petition and ordered to report for a deportation hearing on December 21, 1967.

December 21, 1967. he admitted during his deportation hearing (1) that he had illegally entered the United States and (2) that he did not fear persecution in Hong Kong. He requested the privilege of voluntary departure to Mexico. This was granted on condition that he depart before February 5, 1968. His voluntary departure date was put off until May 30, 1969, due to his filing a petition to reopen his deportation hearing which he then abandoned.

May 31, 1969. he failed to voluntarily depart, and the government attempted to deport him to Mexico. However, when Mexico refused to accept Hui, he was notified that he would be deported to Hong Kong.

December 10, 1970. He filed a second motion to reopen his deportation hearing.

February 19, 1971. He was allowed to apply for suspension of deportation.

December 2, 1971. At his second reopened hearing he once more failed to apply for suspension of deportation, and again requested to be allowed to depart voluntarily. This was granted, and, again, he failed to leave.

November 8, 1973. He was advised to prepare for deportation to Hong Kong.

November 20, 1973. He filed a third petition to reopen his deportation hearing.

February 12, 1973. This petition was denied on the ground that it was dilatory.

April 15, 1974. He was notified to surrender for deportation on April 29, 1974.

May 20, 1974. He filed a fourth motion to reopen his deportation hearing ^{2/} and an application for suspension of deportation.

May 21, 1974. He filed a request for asylum based upon his alleged fear of persecution in Hong Kong or of being returned to Mainland China.

May 22, 1974. Before the INS had taken any action with respect to this request, he filed a complaint alleging his request had been denied in an arbitrary manner. (Subsequently, he was interviewed and his request was denied.) His complaint was dismissed on the basis of Ming v. Marks (S.D.N.Y. 1973) 367 F.Supp. 673. However, he was permitted by stipulation to join his case to the Ming appeal. ^{3/}

November 8, 1974. The Second Circuit affirmed Ming v. Marks in a per curiam opinion. 505 F.2d 1170.

April 14, 1975. The Supreme Court denied cert. 421 U.S. 911.

October 28, 1975. Hui was notified to report for deportation on November 10, 1975.

November 7, 1975. He submitted another application for asylum, based upon fear of persecution. He was interviewed by a deportation officer on the same day. Later, the officer, the officer's supervisor and the deputy district director, after each made an independent investigation, recommended that the asylum request be denied.

January 28, 1976. District Director Kiley reviewed Hui's application and denied it.

February 3, 1976. Kiley notified Hui and the State Department of his conclusion. ^{4/} Hui's notice, contained in a form letter, said in pertinent part:
 "This Service has determined that there is no basis for granting your request"

May 18, 1976. The State Department notified Kiley that it concurred with his decision.

June 29, 1976. Hui brought the present action. The defendant consented to a stay of deportation during the pendency of this case.

SHEK. Lap Kin Shek is also a native of mainland China who emigrated to Hong Kong in 1957. Subsequently Shek left Hong Kong and travelled to Genoa, Italy, where he decided to come to the United States. On March 6, 1972, he enlisted as a crewman aboard a vessel bound for Baltimore, Maryland. On April 3, 1972, he entered the United States illegally. The INS apprehended him on September 18, 1972. From this point his deportation history is as follows:

October 10, 1972. After a deportation hearing he was found to be deportable. Like Hui, Shek conceded he did not fear persecution and requested the privilege of voluntary departure. He was given until December 20, 1972, to depart on his own.

April 5, 1973. The INS notified him to surrender for deportation to Hong Kong on April 10, 1973.

April 9, 1973. Shek submitted an application for asylum based, like Hui's, on his alleged fears of persecution or of being returned to the mainland. On the very same day he brought an action seeking relief from an anticipated denial of his request. (His procedural history then tracks Hui's as both were joined, by stipulation, to the Ming case.)

December 2, 1975. Shek filed a new application for asylum and was interviewed by a deportation officer, who recommended denial of the request. The officer's supervisor and the Deputy District Director reached the same conclusion.

December 4, 1975. District Director Kiley reviewed and denied the application.

December 9, 1975. Kiley notified Shek and the State Department. Shek's notice was the same as that sent to Hui.

January 20, 1976. The State Department notified Kiley that it concurred with his decision.

January 27, 1976. Shek was notified to report for deportation on February 9, 1976.

February 5, 1976. He moved to reopen his deportation hearing and for relief under Immigration Act §243(h) (8 U.S.C. §1253).

April 9, 1976. His motion was denied.

April 29, 1976. He appealed the denial to the Board of Immigration Appeals (Board).

June 18, 1976. The INS notified him to surrender for deportation on June 30, 1976.

June 23, 1976. The Board dismissed the appeal.

June 29, 1976. He filed the present complaint.

II. The Asylum Procedure

Plaintiffs' have applied for asylum under 8 CFR §108, a discretionary waiver of deportation created by the Attorney General pursuant to his general powers under 8 U.S.C. §1103. In pertinent part ^{5/} the procedure provides that, an applicant must personally appear before an immigration officer and that the local District Director "may approve or deny the application in the exercise of discretion." 8 CFR §108.2. The District Director's decision against asylum is final unless the State Department recommends granting asylum, in which case further procedures follow.

While the history of the asylum section is scanty, in substance it was originally promulgated as an operating instruction designed to further a United States' policy against returning refugees to conditions of persecution. The appendix to the operating instruction states that requests for asylum "owing to persecution or fear of persecution" should be given full consideration on their merits and that "Through the implementation of generous policies of asylum and assistance for political refugees, the United States provides leadership toward resolving refugee problems." 37 Fed. Reg. 3447 (Feb. 16, 1972) (emphasis added). Two years after publication

of this operating policy , the Attorney General promulgated the INS regulation presently at issue, which some feared would preempt other provisions dealing with political refugees. 39 Fed. Reg. 41832 (Dec. 3, 1974). To assuage these fears the provision was modified to explicitly state that those denied discretionary relief under 8 CFR §108 would still have the right to apply for relief pursuant to Section 243(h) of the Immigration Act, 8 U.S.C. §1253.^{6/} This section reflects similar policies in that it authorizes the Attorney General to provide discretionary relief for "the alien [who] would be subject to persecution on account of race, religion or political opinion . . ."

Plaintiffs do not ask this court to review the merits of the denial of their §108 applications. See, e.g., Plaintiffs' Affidavit in Opposition to a Motion for Summary Judgment ¶5. Instead they argue, inter alia, that they were improperly notified by a form letter. Specifically, plaintiffs allege that the form notice of denial, quoted above, failed to meet the standards of 8 CFR §103.3 which provides:

" Whenever a formal application or petition . . . is denied, the applicant shall be given written notice setting forth the specific reasons for such denial."

The INS admits that it uses a form letter to deny asylum in cases where there is clearly no basis for the alien's contention that he will be persecuted if deported. (Kiley Affidavit ¶14). According to Deputy Director Kiley this procedure is necessary to handle the "increasing number of frivolous applications" he receives. (Id.)

If this had been a class action or plaintiffs' first contact with the deportation process, we might possibly agree with their contention that the form letter failed to comport with the regulations requiring "specific reasons". However, we must consider the particular plaintiffs in this case. In this context, the INS notice that plaintiffs had "no basis" for their applications did set forth the specific reason for the applications' denials. Faced with plaintiffs' previous declarations in deportation hearings that they did not fear persecution in Hong Kong and their failure to provide any evidence to the contrary despite the allegations of persecution in their asylum complaints, the INS was within §103.3's requirements in stating that the applications were denied because there was "no basis" for them.

Additionally, insofar as 8 CFR §103.3 was designed to force the INS to consider each application individually, we note that both plaintiffs' requests were reviewed five times. See supra, pp. 3 & 4. Insofar as the regulation was designed to notify applicants of the reason for their denials, we note that both plaintiffs have a long history of previous INS proceedings and are well aware of the reasons for their deportation: their illegal entry and failure to provide any evidence of possible persecution.

Plaintiffs also allege that their applications were treated as a group, thereby violating (1) 8 CFR §108's requirement that each applicant receive individual treatment and (2) various provisions of the Constitution. Plaintiffs' allegations of group treatment are drawn

principally, from the use of the form letter to deny both plaintiffs' applications.^{7/} We find no violation of 8 CFR §108 because there is unrefuted evidence that each application was individually reviewed five times: by a deportation officer, the officer's supervisor, the deputy district director, the district director and the state department.

Finally, the procedures used to deny the plaintiffs' applications for asylum do not violate the Constitution. They do not violate the equal protection clause because these applications were treated in the same manner as all others whose applications were frivolous. *Kiley Aff.* ¶8. Although plaintiffs are entitled to procedural due process, *Sovich v. Esperdy* (2d Cir. 1963) 319 F.2d 21, 24, they have not given the court any reason to believe this was denied them. Cf., *Ming v. Marks*, *supra* 367 F.Supp. 673, 680. In fact, the government informs the court that, even now, plaintiffs are entitled to a full hearing under Immigration Act §243(h) if they produce any evidence of persecution.^{8/} In short, there is no basis for plaintiffs' allegations that the Constitution or INS administrative regulations were violated by any failure to consider their applications individually.

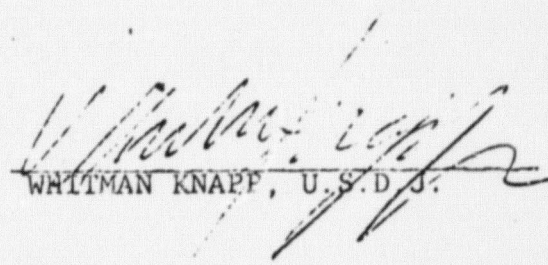
III. Attorney Fees and Costs

The government's request for attorneys fees and costs is denied at this time because we are reluctant to say that plaintiffs' §103.3 notice argument was totally without merit. See, *Acevedo v. Immigration & Naturalization Service* (2d Cir. 1976) 538 F.2d 918, 919. Nonetheless, we note that plaintiffs' attorney has narrowly limited

the issues before this court. If this was designed to allow plaintiffs to bring subsequent actions on matters which could have been brought at the present time or if plaintiffs continue to bring proceedings without alleging or producing any evidence entitling them to relief, future awards of costs and attorney fees may well be appropriate.^{9/} See, Acevedo, supra; Yan Wo Cheng v. Rinaldi (D.J.J. 1975) 389 F.Supp. 583, 591.

Accordingly, defendant's motion for summary judgment is granted. Defendant's request for costs and attorney fees is denied. Submit judgment.

Dated: New York, New York
February 28, 1977.


WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

- 1/ The following discussion concerning plaintiffs Hui and Shek is drawn in large part from the government's papers. Plaintiffs have questioned their accuracy only in inconsequential areas. For purposes of defendant's motion, the court has not considered any statement contested by the plaintiffs.
- 2/ The parties disagree as to whether this motion is still pending. In any event its outcome is immaterial to the present controversy.
- 3/ Ming v. Marks is discussed infra at note 6.
- 4/ 8 CFR §108.2 requires the State Department to be notified.
- 5/ See C. Gordon & H. N. Rosenfield, Immigration Law & Procedure (1976) §5.3(e) for a fuller explanation.
- 6/ 8 CFR §108.2 also allows those denied asylum to apply to remain in the United States under Articles 32 and 33 of the United Nation's Convention Relating to the Status of Refugees. 19 U.S. Treaties 6257. The present plaintiffs, however, are not entitled to relief under the U. N. Treaty, as they are not "lawfully" in this country. Ming v. Marks, supra.
- 7/ Plaintiffs' attorney also finds evidence of group treatment in (1) the government's misinterpretation of the scope of his complaint and (2) a former INS policy concerning Hong Kong Chinese applications. The procedure in question was not used in the denials of the applications under review, and therefore is irrelevant. See Kiley Affidavit ¶7. (Earlier procedure was abandoned).
- 8/ We do not mean to suggest that we think plaintiffs have any likelihood of success should they move pursuant to §243(h). We note that that section requires a showing of persecution, and the INS has already denied one motion pursuant to that section made by plaintiff Shek after he moved pursuant to §108.
- 9/ In such an occasion it might well be appropriate to consider awarding attorney's fees retroactively to include the present proceedings.

AFFIDAVIT OF T.A. CHURCH IN SUPPORT OF PLAINTIFF'S MOTION
FOR A STAY OF JUDGMENT (Dated March 17, 1977)

52a

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

(pp. 52a-54a)

-----X

HUI, YING LAI (A17 540 719)

and

SHEK, LAP KIN (A15 196 208)

Plaintiffs

AFFIDAVIT

: r-7210

- against -

MAURICE F. KILEY, as District Director for
the Immigration and Naturalization Service,
New York District, United States Department
of Justice,

Defendant

-----X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

THOMAS A. CHURCH, being duly sworn, deposes and says:

1. I am the attorney in the above entitled action and as such am fully familiar with all of the pertinent facts heretofore had before the Immigration and Naturalization Service and in the United States District Court below. I make this affidavit in support of plaintiffs' motion for a stay of the judgment of the United States District Court for the Southern District of New York, dated March 15, 1977, pending appeal of said judgment to this Court and/or for an expedited appeal of said judgment.

2. Plaintiffs, on June 29, 1976, brought this action in the United States District Court for the Southern District of New York to request a judicial review of the procedure followed by the Immigration Service in adjudicating applications for asylum under 8 C.Y.R. 108 made by deportable Chinese applicants.

3. Plaintiff Hui, admitted to this country as a visitor, and Plaintiff Shek, a crewman, both of whom appear to be refugees within the meaning of the statute and regulation received identical notices of denial stating that "there is no basis for your application."

4. It was contended that: (1) the notices of denial given

the plaintiffs were inadequate in that they did not meet the requirement of 8 C.F.R. 103.3 in that the applicants were not "...given written notice setting forth the specific reasons for such denial..." and (2) because of the identical language used, and because of other factors in their treatment, it was obvious that these applications were not given individual consideration, but were treated as a group, in a discriminatory fashion.

5. The District Director has never set forth a standard nor clarified his authority with respect to asylum cases.

6. Since it appeared that one of the plaintiffs was about to be deported the action was brought on by an order to show cause, which required that both parties appear before the District Court Judge. The Government declined to do this, conceding that action was a novel one, since the regulation was relatively new. The Government has since confirmed this in its original memorandum of law. The Government stipulated that the plaintiffs' deportation be stayed pending a final determination by the District Court. A copy is annexed as Exhibit "1".

7. Subsequently, the Government, because of the novel issue, consented to stipulate any ensuing cases posing the same issues, i.e., with identical notices of denial. (See Exhibit "2".)

8. Since that time the Government has agreed to stipulate over eighty cases, based on the same issue. It is believed that the Government has consented to stipulate the cases of a number of other attorneys who raise the same issue.

9. On November 29, 1976, five months after the original complaint had been filed, the Government responded for the first time by filing a motion for summary judgment, and alleging for the first time that the action was "frivolous and dilatory", and also stating in its papers that "...Because 8 C.F.R. 108 was promulgated so recently, there is to our knowledge no case law discussing its provisions or its history."

10. The Honorable Whitman Knapp, United States District Judge of the Southern District heard oral argument of the matter on

January 28, 1977. It was demonstrated to the Court at that time that the Government proposed to deport one of the stipulated cases, a 50 year old man to Taiwan, a country to which he had never been.

11. On March 1, 1977, Judge Knapp rendered a decision adverse to the plaintiffs as to the merits. In denying the Government's request for court costs, the opinion stated, "...we are reluctant to say that plaintiffs' Sec. 103.3 notice argument was totally without merit." A copy of the opinion is annexed as Exhibit "3".

12. Judgment was entered on March 15, 1977.

13. The plaintiffs applied for a stay pending appeal. Judge Knapp denied the application. (Exhibit "4".)

14. Plaintiffs immediately filed a notice of appeal.
(Exhibit "5".)

15. The United States Attorney has threatened to deport all of these plaintiffs immediately. Not only would this be an unfair manner of mootng these cases now on appeal, but would also seem to violate the automatic ten (10) day stay provision of 62(a) of the Federal Rules of Civil Procedure.

16. For the above reasons, plaintiffs' motion should be granted as to the plaintiffs and all relating cases.

Thomas A. Church
THOMAS A. CHURCH
Attorney for the Plaintiffs

94 Bayard Street
New York, New York 10013
Tel: (212) RE2-9237

STATE OF NEW YORK
COUNTY OF NEW YORK

Sworn to before me this
17th day of March, 1977

NOTARY PUBLIC

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT:

EXHIBIT 1 - STIPULATION DATED JUNE 30, 1976

55a

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT NEW YORK

-----X
HUI, YING LAI (A17 540 719) :
and :
SHEK, LAP KIN (A15 196 208) : ACTION FOR
Plaintiffs : DECLARATORY JUDGMENT
v. : Civil Action No.
MAURICE F. KILEY, as District Director for the : 76 Civ. 2890 WK
Immigration and Naturalization Service, New York :
District, United States Department of Justice. : (Judge Knapp)
Defendant
-----X

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between the attorneys for
the respective parties herein that the deportation of the Plaintiffs be
stayed pending a final determination of this cause of action by the
District Court.

TO 6/30/76
TAC

Dated: New York, New York
June 30, 1976.

Thomas A. Church
THOMAS A. CHURCH
Attorney for Plaintiffs

Thomas A. Bell
Attorney for Defendant
Special Assistant
United States Attorney

EXHIBIT 2 - STIPULATION DATED SEPTEMBER 16, 1976

56a

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

WONG, Yuh Fung	(A16 028 701)	
NG, Wan Po	(A15 653 979)	:
SUI, To Fat	(A15 364 501)	:
LAU, Tak Yun	(A21 778 936)	:
		: ACTION FOR
	Plaintiffs	: DECLARATORY JUDGMENT
v.		
MAURICE F. KILEY, as District Director for the		: 76 CIV 3402
Immigration and Naturalization Service, New York		:
District, United States Department of Justice		: JUDGE FRANKEL
	Defendant	

S T I P U L A T I O N

WHEREAS the facts and legal issues in the above-captioned action are similar to the facts and legal issues in:

HUI, Ying Lai et al. v. Kiley
Civil Action No. 76-2090

presently pending before the Honorable Whitman Knapp of this Court.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that

(1) The above-captioned action now pending before this Court will be governed by the final determination of the Court in the HUI Ying Lai et al. case; and

(2) That pending such determination the deportation of the plaintiffs in the above-captioned action shall be stayed by the Immigration and Naturalization Service; and

(3) That the above-captioned action be and the same is hereby dismissed.

Dated: New York, New York
September 16, 1976

Thomas A. Church
THOMAS A. CHURCH
Attorney for Plaintiffs

ROBERT B. FIERCE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant

By: Mary P. Maguire
Special Assistant
United States Attorney

So Ordered:

U. S. D. J.

EXHIBIT 3 - NOTICE OF APPEAL

57a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
HUI, YING LAI (A17 540 719) :
and :
SHEK, LAP KIN (A15 196 208) :
:
Plaintiffs, : NOTICE OF APPEAL
- v - : 76 CIV. 2890 (WK)
:
MAURICE F. KILEY, as District Director :
for the Immigration and Naturalization :
Service, New York District, United States :
Department of Justice, :
:
Defendant :
-----X

S I R S :

PLEASE TAKE NOTICE that the Plaintiffs appeal from this Court's judgment and order of March 15, 1977 to the United States Court of Appeals for the Second Circuit in so far as the aforesaid judgment granted Defendant relief. Plaintiffs appeal from each and every part of that portion of the aforesaid judgment which granted Defendant relief.

Dated: New York, New York
March 15, 1977

Yours, etc.,

THOMAS A. CHURCH
Attorney for the Plaintiffs

94 Bayard Street
New York, New York 10013
Telephone: (212) RE2-9237

TO: ROBERT S. GROBAN, JR.
Special Assistant United States
Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

LETTER FROM T.A. CHURCH TO HON. WHITMAN KNAPP DATED
FEBRUARY 25, 1977 (pp. 58a-60a)
February 25, 1977

58a

Honorable Whitman Knapp
United States District Court
United States Courthouse
Foley Square
New York, New York 10007

Re: Hui, et al. v. Kiley
76 Civ. 2890 (WK)

Dear Judge Knapp:

Last week, on February 15, 1977, the United States District Court for the Southern District of Florida decided a case involving some three hundred (300) Haitians who had made application for asylum in Miami. Sannon, et al. v. United States, 74 Civ. 428, and Ketley, et al. v. United States 75 Civ. 2124. United States District Court Judge James Lawrence King ordered those cases remanded to the Immigration and Naturalization Service for further hearings on the applications since he was not satisfied with the administrative procedure followed in the cases.

In view of the Government's representation that there is no case law regarding 8 C.F.R. 108 since its inception, because the regulation is so recent, a copy of the decision is attached for your Honor's inspection.

The attached opinion is not on all fours with the case now before this Court, because it involves asylum applications made during an exclusion proceeding. It makes no attempt to review the District Director's decisions in such applications. Further, the Florida case was originally filed and concerned applications made in 1974, before the asylum procedure became a regulation.

However, the decision does have some pertinence to the Hui and Shek cases, now before your Honor, for the following reasons:

....to be cont'd

1. The opinion, as a whole, indicates that the Florida Court was not satisfied with the administrative procedure followed by the Service in handling asylum applications.

2. The decision recognizes the distinction between applications brought under the broad general provisions of the Protocol Relating to Refugees and the asylum provisions which do not require lawful status:

"...Article 32 ... applies only to
aliens in the United States lawfully."
(At footnote 28, p. 5, Appendix to the
opinion.)

3. The decision illustrates the extreme reluctance of the Government to either confront or clarify the issue of "asylum", either before or after it became a regulation. The Florida case was originally remanded to the Service on May 17, 1976 by virtue of a representation made by the Service that full and fair hearings would be given the Haitian petitioners. Thereafter, the Immigration Service failed to comply with the order. The Service claimed that the failure to do so was "inadvertent and 'an administrative error'." (See Judge King's order.)

This is of extreme importance when it is remembered that, at about the same time in Hui and Shek's cases as the New York District Director concedes in his affidavit, the District Director had failed to comply with the then existing Operations Instructions concerning the original applications filed by these men, and once the asylum procedure became a regulation, he volunteered to accept fresh applications from the Hong Kong Chinese. It is contended that this latter procedure was a sham in order to give the appearance of being fair under the new regulation.

4. The Florida decision makes it obvious that the cases now before your Honor raise issues which are certainly not without merit.

..../to be cont'd

On January 26, 1977, I filed a third case, relating to the original complaint. The Government suggested that I file it to your Honor's attention. (CHUN, Yao Boy, 77 Civ. 369). During oral argument on January 28, 1977, I submitted the complaint to your Honor. The Government stated in open court that this was a "related case."

I would like to apologize to the Court for not making my motion for consolidation. However, I was under the distinct impression that Mr. Groban would be willing to stipulate as to consolidation. Mr. Groban now indicates he will oppose consolidation.

This third plaintiff was admitted to the United States as a visitor. Since his arrival, his daughter, her husband and children after five (5) years of residence in Hong Kong have been admitted to the United States as refugees. The Government had asked him to surrender for deportation to Taiwan, a country to which he has never been. The plaintiff concedes that the Government may deport him to Taiwan under Section 243 (a)(7); 8 U.S.C. 1253 (a)(7) as "...any country willing to accept such alien into its territory." This alien had applied for asylum as a refugee. His application had also been denied because there was "no basis" for it. The added complaint was filed in order to underscore and emphasize the unfair results which arise from the denials of these applications. In terms of "human rights", this is an horrendous result. (The Government has sent him a letter asking him to surrender into custody. Such detention would be illegal since at this time they do not have a Taiwanese travel document and are therefore not in a position to deport him.)

My motion to consolidate will be submitted shortly.

Yours respectfully,

THOMAS A. CHURCH

TAC/al
Enclosures

STIPULATION TO SUPPLEMENT APPENDIX

61a

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT-----X
HUI, YING LAI
SHEK, LAP KIN(A17 540 719)
(A15 196 208)

Plaintiffs

- v -

MAURICE F. KILEY, as District Director for the
Immigration and Naturalization Service, New York
District, United States Department of Justice

Defendant

DOCKET NO.

77-6052-----X
STIPULATION TO SUPPLEMENT APPENDIX

IT IS HEREBY STIPULATED AND AGREED by and between the
undersigned that the following documents be made a part of the appendix:

(1) The verified complaint filed by Yao Doy CHUN (77 Civ. 369
(WK)), on January 26, 1977, and submitted to ~~and argued before~~ Judge Knapp
on January 28, 1977.

(2) The complaint of Wa Tung CHAN et al. filed on March 14, 1977,
77 Civ. 1225 (WK).

(3) The complaint of Hon Ming LEE et al. filed on March 30, 1977,
77 Civ. 1527, Judge Owen.

Dated: New York, New York

April 13, 1977

Thomas A. Church
THOMAS A. CHURCH
Attorney for Plaintiffs

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant

By:

Robert S. Groban, Jr.
ROBERT S. GROBAN, JR.
Special Assistant
United States Attorney

PLAINTIFF CHUN, YAO DOY'S SUMMONS

62a

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D. C. Form No. 43a Rev. (6-19-61))

United States District Court

FOR THE

~~SOUTHERN DISTRICT OF NEW YORK~~

CIVIL ACTION FILE NO. _____

CHUN, YAO DOY (A19 550 905)

77CIV 20-1
Judge KNAPP

Plaintiff

v.

SUMMONS

MAURICE F. KILEY, as District Director
for the Immigration and Naturalization
Service, New York District, United
States Department of Justice

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon THOMAS A. CHURCH
Attorney for Plaintiff

plaintiff's attorney , whose address is located at 94 Bayard Street, New York, NY 10013

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT Clerk of Court.

Deputy Clerk.

Date: New York, New York
this 26th day of January, 1977

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

PLAINTIFF CHUN'S VERIFIED COMPLAINT
(pp. 63a-65a)
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

63a

-----X
CHUN, YAO DOY (A19 550 906)

Plaintiff

- v -

MAURICE F. KILEY, as District Director for
the Immigration and Naturalization Service,
New York District, United States Department
of Justice

Defendant
-----X

:
:
:
: ACTION FOR

: DECLARATORY JUDGMENT

: Civil Action No.
:
:
:

Plaintiff, by his attorney respectfully alleges:

1. This is an action for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for a review under the Administrative Procedure Act (5 U.S.C. 704).
2. This action poses the same issues as those raised in HUI Ying Lai and SHEK Lap Kin v. KILEY, 76 Civ. 2890 filed on June 29, 1976.
3. This Plaintiff, 50 years old is an overstay visitor who is now unlawfully in the United States. He has been here since 1971.
4. The Government has asked him to surrender for deportation on February 3, 1977 to Taiwan. This Plaintiff has never been to Taiwan.
5. In short, the Government proposes to deport him to a country to which he has never been.
6. After leaving China, Plaintiff passed through Hong Kong, for 3 days, and there emigrated to Peru. From there he entered the United States as a visitor in 1971. He has received a hearing and has been found deportable as an overstay visitor.
7. Since his admission to the United States his daughter, also from China and who had resided in Hong Kong five (5) years was admitted to the United States as a refugee.
8. His daughter, her husband and their two (2) children are now permanent residents by virtue of their refugee status.

9. Plaintiff, who has one (1) son in Hong Kong, is now living in New York with his only remaining family, not in China, i.e. his daughter, son-in-law, and his grandchildren.

10. He also submitted an application for asylum on January 27, 1976.

11. As in the other cases from mainland China, he was given a notice that there was "no basis" for his application. No specific reasons were given.

12. The Government proposes to deport him to Taiwan. He has never been there. This would be an extremely cruel and inhuman hardship for him.

13. That no previous application for the specific relief sought herein has been made to this or any other court of competent jurisdiction upon the facts set forth herein.

14. Plaintiff has exhausted each and every one of his administrative remedies and must seek recourse to this court to declare the above described procedure to be discriminatory, arbitrary, and capricious.

WHEREFORE, Plaintiff prays for judgment declaring:

(a) That his case be joined and consolidated with the HUI Ying Lai and SHEK Lap Kin cases, since the issues are identical.

(b) For a hearing and review of the procedure followed in this case;

(c) For a judgment declaring that the acts of the District Director of the Immigration Service are illegal and unconstitutional;

(d) That the Plaintiff is a refugee and is prima facie entitled to the protection afforded by the asylum regulation;

(e) For an order staying further proceedings against the Plaintiff, pendente lite.

(f) For such other and further relief as may be appropriate.

Respectfully submitted.

Thomas A. Church
 THOMAS A. CHURCH
 Attorney for Plaintiff

94 Bayard Street
 New York, New York 10013
 Telephone: (212) RE2-9237

Dated at New York, New York

this 25th day of January, 1977

STATE OF NEW YORK)
 CITY OF NEW YORK) ss:
 COUNTY OF NEW YORK)

THOMAS A. CHURCH, of 94 Bayard Street, New York, NY 10013,
 being duly sworn, deposes and says as follows:

That the foregoing, being the contents of the answer in the
 within action, has been perused and read by him as Plaintiff's attorney,
 and the same are known to be true to his own knowledge, except as to matters
 therein stated to be alleged upon information and belief, and that as to
 those matters he believes them to be true.

Thomas A. Church
 THOMAS A. CHURCH

SWORN TO AND SUBSCRIBED BEFORE ME
 this 25th day of January, 1977

Leopoldo Sangrianti

LEOPOLDO D. SANGRIANTI
 Notary Public, State of New York
 No. 21-87556-10 Qual. in Kings County
 Commission Expires March 30, 1978

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-54)
(Formerly D. C. Form No. 46 Rev. (6-49))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

CHAN, Wa Tung (A15 921 242)
CHAN, Sui Chun (A16 006 029)
HUI, Fung Fai (A15 768 379)
HUI, Sze Fong (A21 055 679)
LOK, Sui Ping (A16 026 850)
LAM, Sang (A15 172 467)
CHAN, Yee Tung (A16 009 468)

Plaintiffs

v.

MAURICE F. KILEY, as District Director
for the Immigration And Naturalization
Service, New York District, United
States Department of Justice

Defendant

SUMMONS

77 CIV. 1225
J. Knap

To the above named Defendant :

You are hereby summoned and required to serve upon THOMAS A. CHURCH
Attorney for Plaintiffs

plaintiff's attorney , whose address is located at 94 Bayard Street. New York, NY 10013

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT
Clerk of Court.

B. Wasserman
Deputy Clerk.

Date: New York, New York
this 14th March, 1977

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(pp. 67a-70a)

**AFFIDAVIT IN SUPPORT OF
AN ORDER TO SHOW CAUSE**

COMPLAINT

- v -

Defendant

SS.:

THOMAS A. CHURCH, ~~being duly sworn, deposes and says:~~

5. They fall within the identical issues raised in Hui and Shek v. Kiley, 76 Civ. 2890 (WK), which complaint was filed on June 29, 1976.

The Special Assistant United States Attorney there in charge of the case agreed to stipulate to a stay "pending a final determination of this cause of action by the District Court."

6. Shortly thereafter the Special Assistant United States Attorney agreed to stipulate all subsequent cases raising the same issues "until a final determination of the Court."

7. In December, 1976, the Government responded by a motion for summary judgment.

8. Oral argument on the matter was heard by this court on January 28, 1977, by the Honorable Whitman Knapp, United States District Judge.

9. On March 1, 1977, Judge Knapp rendered a decision against the Plaintiffs, with a direction to "Submit Judgment." It does not appear that the Government at this time has submitted Judgment.

10. The Plaintiffs intend to appeal the Hui and Shek decision because it is felt (1) that novel questions have been raised concerning a relatively recent regulation; (2) a serious question of jurisdiction has been raised as between this court and the Court of Appeals concerning judicial review of the District Director's actions; and (3) The United States District Court in Miami, Florida has rendered a decision adverse to the Government, which was submitted to his honor as expeditiously as possible, which did not appear to be received by the Court in time for its consideration.

11. In the meantime the Government has indicated that it no longer intends to abide by the original agreement concerning stipulations.

12. Against, the Plaintiffs intend to proceed with an appeal when able to do so, as expeditiously as possible. Since the judgment is not now final, it is impossible to do so.

13. Although Rule 62 provides for an automatic (10) day stay from the date when the judgment is final, the Government proposes to deport one (1) of your initial plaintiffs at this time.

14. The Plaintiffs have exhausted all administrative remedies.

15. Your Petitioners respectfully request that the Court grant a stay of deportation until the original Plaintiffs are in a position to take an appeal from the Court's decision.

WHEREFORE, your Petitioners respectfully request the following relief:

- (a) Restraining the defendant from deporting Plaintiffs pending the finality of the Judgment referred to above; and
- (b) For such other and further relief as may be appropriate.

Thomas A. Church
 THOMAS A. CHURCH
 Attorney for the plaintiffs

Date at: New York, New York

STATE OF NEW YORK)
 COUNTY OF NEW YORK) SS.:

THOMAS A. CHURCH, being duly sworn, deposes and says:
 That he is the Petitioner in the within action; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

Thomas A. Church
 THOMAS A. CHURCH

SWORN TO AND SUBSCRIBED BEFORE ME
 this 14th March, 1977

Raymond J. Salomone
 Notary Public, State of New York
 My. No. 001,000 (Qual. in Kings County)
 Expires March 30, 1978

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X
:
CHAN, Wa Tung (A15 921 242)
CHAN, Sui Chun (A16 006 029)
HUI, Fung Fai (A15 768 379)
HUI, Sze Fong (A21 055 679)
LOK, Sui Ping (A16 026 850)
LAM, Sang (A15 172 467)
CHAN, Yee Tung (A16 009 468)
:

Plaintiffs

- v -

MAURICE F. KILEY, as District Director for :
the New York District of the Immigration :
and Naturalization Service, United States :
Department of Justice :
Defendant :

-----X
THOMAS A. CHURCH, attorney for the above Plaintiffs,

respectfully alleges:

1. That the reason this application is made by an Order to Show Cause instead of the usual Notice of Motion is that these Plaintiffs will be deported from the United States before the motion could be heard.
2. That no previous application by these plaintiffs for the specific relief sought herein has been made to this or any other court of competent jurisdiction. They are requesting stays pending final determination of a cause raising identical issues.
3. Plaintiffs have exhausted each and every one of their administrative remedies and must seek recourse to this court to declare the above described procedure to be discriminatory, arbitrary, and capricious.

State of New York
County of New York

Thomas A. Church
THOMAS A. CHURCH
Attorney for Plaintiffs

94 Bayard Street
New York, NY 10013

Sworn to before me
this 14th day of March, 1977

Lazarus D. Sanger
NOTARY PUBLIC

LAZARUS D. SANGER
Notary Public, State of New York
No. 24-87559 Qual. in Kings County
Expires March 30, 1978

PLAINTIFF LEE, HO, CHENG'S SUMMONS

71a

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D.C. Form No. 45a Rev. 10-4-67)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

LEE, Hon Ming (A16 002 653)
Ho, Ying Ki (A16 004 420)
CHENG, Yiu Ming (A15 173 460)

77 CIV 18-27

Judge Chen

Plaintiff,

v.

SUMMONS

MAURICE F. KILEY, sd District
Director for the Immigration
and Naturalization Service,
New York District, United
States Department of Justice

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon THOMAS A. CHURCH

Attorney for Plaintiffs

plaintiff's attorney , whose address is located at 94 Bayard Street, New York, NY 10013

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

RAYMOND F. BURCHARDT

Clerk of Court.

Deputy Clerk.

Date: New York, New York
March 30, 1977

[Seal of Court]

NOTE:--This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RECORD ON SERVICE OF SUMS.

BEST COPY AVAILABLE

72a

-----X
:

LEE, Hon Ming	(A16 002 653)	
HO, Ying Ki	(A16 004 420)	:
CHENG, Yiu Ming	(A15 173 460)	

ACTION FOR

: DECLARATORY JUDGMENT

- v -

Civil Action No.

Defendant

Plaintiffs, by their attorney, respectfully allege:

1. This is an action for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for a review under the Administrative Procedure Act (5 U.S.C. 704).

2. The issues in these Plaintiffs' cases are identical with the declaratory judgment action, Hui and Shek v. Kiley, 76 Civ. 2690 filed on June 29, 1976, now pending the United States Court of Appeals, Second Circuit, it is complained that the procedure invoked by the District Director in denying these Plaintiffs' applications for the protection of asylum is discriminatory, and thereby unconstitutional; without adequate reason, and therefore illegal. These Plaintiffs' applications did not receive individual consideration, but were treated as a class with the other Hong Kong Chinese applicants.

3. These Plaintiffs were born in China, and escaped that country after the Chinese Communists overran that country, to Hong Kong. They are crewmen and having overstayed the period of time allotted to them in the United States were subsequently apprehended by the Immigration Service, accorded hearings and found deportable.

4. They are now under orders of deportation and have been asked to surrender for deportation.

5. They have been applicants for asylum. Their applicants were denied without reason, as in those actions adversely decided by Judge Knapp.

6. It is obvious in these cases involving the Hong Kong Chinese that the Government has predetermined these cases and classified them in a discriminatory fashion without consideration as to individual merit in an attempt to give the appearance of giving due and fair consideration to the facts of each case.

7. Reference is made to the Complaint filed on behalf of Hui and Shek v. Kiley, (*supra*) that the Government concedes that under their original policy, the Hong Kong Chinese cases, and only the Hong Kong Chinese cases were not referred to the Department of State, but were "telephonically" declined." These cases are a further indication that the Hong Kong Chinese are treated separately and in a discriminatory fashion.

8. In short, these Plaintiffs contend that the procedure followed in their cases, regarding their applications as Hong Kong Chinese, who escaped from mainland China, is both illegal and unconstitutional.

9. That the Plaintiffs, by their attorney, THOMAS A. CHURCH, allege and aver that no previous application for the specific relief sought herein has been made to this or any other court of competent jurisdiction upon the facts set forth herein.

10. Plaintiffs have exhausted each and every one of their administrative remedies and must seek recourse to this court to declare the above described procedure to be discriminatory, arbitrary, and capricious.

WHEREFORE, Plaintiffs pray for judgment declaring:

(a) For a hearing and review of the procedure followed in these cases;

(b) For a judgment declaring that the acts of the District Director of the Immigration Service are illegal and unconstitutional;

(c) That these Plaintiffs are refugees and are *prima facie*

entitled to the protection afforded by the asylum regulation;

(d) For an order staying further proceedings against these Plaintiffs, pendente lite.

(e) For such other and further relief as may be appropriate.

Respectfully submitted.

Thomas A. Church

THOMAS A. CHURCH
Attorney for Plaintiffs

94 Bayard Street
New York, New York 10013
Telephone: (212) RE2-9237

Dated at New York, New York
this 30th day of March, 1977.

NOTICE OF SETTLEMENT AND JUDGMENT
(pp.75a-79a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

HUI, YING LAI (A17 540 719) and :
SHEK, LAP KIN (A15 196 208), :

Plaintiffs, :

= v -

MAURICE P. KIRBY, as District
Director for the Immigration
and Naturalization Service,
New York District, United
States Department of Justice.

Defendant. :

-----x

S I R :

PLEASE TAKE NOTICE that the within proposed
judgment will be presented for settlement and signature to
the Honorable Whitman Knapp, United States District Judge,
at the Office of the Clerk of the Court, Room G-66, United
States Courthouse, Foley Square, Borough of Manhattan, City
of New York, on the 18th day of March, 1977, at 10:30 A.M.
or as soon thereafter as counsel can be heard.

Dated: New York, New York

March 11, 1977.

76a

Yours, etc.,

ROBERT B. FISKE, Jr.,
United States Attorney for the
Southern District of New York
Attorney for Defendant

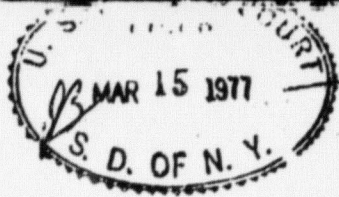
By: Robert S. Groban
ROBERT S. GROBAN, Jr.,
Special Assistant United States
Attorney
Office & P.O. Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-6021

To: Thomas A. Church
94 Bayard Street
New York, New York 10013
Telephone: (212) RE2-9237

15

77a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x

HUI, YING LAI (A17 540 719) and :
SHEK, LAP KIN (A15 196 209), :
 :
Plaintiffs, :
 :

- v -

MAURICE F. KILEY, as District :
Director for the Immigration and :
Naturalization Service, New York :
District, United States Department :
of Justice, :
 :
Defendant. :
 :

ORDER AND JUDGMENT

76 Civ. 2890 (WK)

-----x

WHEREAS, the defendant moved this Court on
November 29, 1976 for an order pursuant to Rule 56 of the
Federal Rules of Civil Procedure and this Court's equitable
power entering summary judgment for the defendant and
awarding the defendant his just costs, including reasonable
attorney's fees, and

The motion for summary judgment was heard before
the Court on January 28, 1977 when the plaintiff was
represented by Thomas Church, Esq., and the defendant by the
United States Attorney for the Southern District of New York,
Robert S. Groban, Jr., Special Assistant United States
Attorney, and

The Court heard oral argument and considered the
following documents:

1. November 29, 1976 affidavit of Maurice F.
Kiley, District Director, Immigration and
Naturalization Service in New York;

MAR 15 1977

(18)

2. November 29, 1976 affidavit of Robert S. Groban, Jr., Special Assistant United States Attorney;
3. Defendant's November 29, 1976 memorandum of law in support of the motion for summary judgment;
4. January 21, 1977 affidavit of Thomas A. Church, Esq., attorney for the plaintiffs;
5. January 18, 1977 affidavit of Ying Lai Hui;
6. January 27, 1977 supplemental affidavit of Robert S. Groban, Jr., Special Assistant United States Attorney;
7. Defendant's January 27, 1977 supplemental memorandum of law in support of the motion for summary judgment and application for attorney's fees.
8. Plaintiffs' February 1, 1977 supplemental memorandum of law;
9. February 2, 1977 letter from Robert S. Groban, Jr., Special Assistant United States Attorney, to Honorable Whitman Knapp; and
10. February 28, 1977 letter from Robert S. Groban, Jr., Special Assistant United States Attorney, to Honorable Whitman Knapp.

After hearing oral argument and considering the documents submitted to the Court by the parties, it is

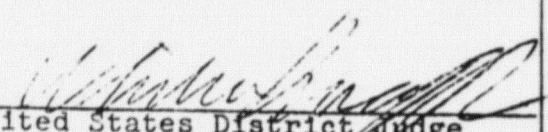
ORDERED AND ADJUDGED, that the motion of defendant MAURICE F. KILEY, as District Director for the New York District of the Immigration and Naturalization Service, is granted, and it is further

ORDERED AND ADJUDGED, that defendant MAURICE F. KILEY, as District Director of the Immigration and Naturalization Service, is granted judgment against the plaintiffs, Ying Lai Hui and Lap Kin Shek and that the action is dismissed, and it is further

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ORDERED AND ADJUDGED, that the application of the defendant for the reasonable costs of this action, including reasonable attorney's fees is denied at this time, without prejudice to any subsequent application for this relief should plaintiffs bring further actions or matters which could have been brought in this action or if plaintiffs continue to institute proceedings without alleging or producing any evidence entitling them to relief.

Dated: New York, New York
March 15, 1977.


United States District Judge

Judgment entered *4/15/77*


RAYMOND F. BURCHARDT
Chief Clerk.

CERTIFICATE OF SERVICE

Re: 77-6052
Hui, Ying Lai, et al v. Maurice F. Kiley

STATE OF NEW JERSEY :
: ss.:
COUNTY OF MIDDLESEX :

I, Muriel Mayer, being duly sworn according to law, and being over the age of 21 upon my oath depose and say that: I am retained by the attorney for the above named Plaintiffs-Appellants .

That on the 20th day of March , 1977, I served the within Brief for Plaintiffs-Appellants

In the matter of Hui, Ying, Lai, et al v. Maurice F. Kiley
upon

United States Attorney
Robert B. Fiske, Esq.
1 St. Andrews Plaza
New York, New York 10007

by depositing two (2) true copies of the same securely enclosed in a post-paid wrapper, in an official depository maintained by the United States Government.

Muriel Mayer
Muriel Mayer

Sworn to and subscribed
before me this 20th day
of April 1977.

Nathaniel Lutz
A Notary Public of the
State of New Jersey.
NATHANIEL LUTZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 21, 1977

CERTIFICATE OF SERVICE

Re: 77-6052
Hui, Ying Lai, etal v. Maurice F. Kiley

STATE OF NEW JERSEY :
: ss.:
COUNTY OF MIDDLESEX :

I, Muriel Mayer, being duly sworn according to law, and being over the age of 21 upon my oath depose and say that: I am retained by the attorney for the above named Plaintiffs-Appellants.

That on the 20th day of , 1977, I served the within
April

Appendix for Appellants

in the matter of Hui, Ying Lai, etal v. Maurice F. Kiley

upon United States Attorney
Robert B. Fiske, Jr., Esq.
1 St. Andrews Plaza
New York, N.Y. 10007

by depositing one (1) true copies of the same securely enclosed in a post-paid wrapper, in an official depository maintained by the United States Government.

Muriel Mayer
Muriel Mayer

Sworn to and subscribed
before me this 20th day
of April 1977.

Nathaniel Lutz
A Notary Public of the
State of New Jersey.

NATHANIEL LUTZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 21, 1977